

Before A. K. Sikri, Chief Justice & Rakesh Kumar Jain, J.J.

PUNJAB STATE CO-OPERATIVE BANK—Appellant

versus

AMRIK SINGH WALIA AND ANOTHER—Respondents

LPA No. 858 of 2010

February 28, 2013

A. Letters Patent, 1919 - Cl. X - Service Law - Common Cadre Rules - Punjab State Cooperative Financing Institution Service (Common Cadre) Rules 1970-71 - RL 1.3(k) and Rule 2(c) - Payment of Gratuity Act 1972 - S. 2 (s) & 4(5) - Dispute over short payment of gratuity - What constitutes last drawn salary for the purpose of payment of gratuity and whether house rent allowance and medical allowance are to be included or not - Held that salary means basic monthly pay inclusive of any other emoluments treated as pay as remunerations and emoluments not defined literal meaning to be taken into account.

Held, that the definition of 'pay' or 'salary' under the Common Cadre Rules, the learned Single Judge opined that the pay would include salary as well as other remunerations drawn as salary. Since Rule 1.3(k) stipulates that salary means the basic monthly pay inclusive of any other emoluments treated as pay", not only the basic pay but other emoluments which are drawn as salary are to be treated as pay. Since terms 'emoluments' and 'remunerations' are not defined under the Common Cadre Rules, the learned Single Judge deemed it fair to look for the literal meaning of these terms, i.e. the dictionary meaning, which is the yardstick to be adopted as held by the Supreme Court in case Gestetner Duplicators Pvt. Ltd. Vs. Commissioner of Income-tax, West Bengal, (1979) 2 SCC 354, Director Central Plantation Crops Research Institute, Kesaragod and others Vs. M.Purushothaman and other, AIR 1994 Supreme Court 2541 as well as State Bank of India and others Vs. K.P.Subbaiah and others, 2003 (11) Supreme Court Cases 646 and few other judgments.

(Para 14)

B. Common Cadre Rules contain provisions for payment of gratuity - Appellant-Bank cannot give benefit to employees under these Rules and take away the same by resorting to provisions under the Act - Intention of Bank determinative factor - Whether Act and Rules can co-exist.

Held, that in the first instance, we would like to emphasize that it is the appellant bank itself which has framed Common Cadre Rules. Appendix-V thereof contains the provisions for payment of gratuity. Thus these rules which are specifically made applicable to Common Cadre Employees govern the service conditions qua gratuity and after all, these Rules are not made to be ignored. The appellant bank cannot give the benefit to the employees under these Rules in so far as payment of gratuity is concerned by one hand and seeks to take away the same by another hand taking pretext of the provisions contained in the Payment of Gratuity Act. The bank at the time of framing of these Rules was well aware of the provisions contained in the Gratuity Act. Obviously, the definition of 'wages' under the Gratuity Act, was known to the bank, which excludes such allowances from the definition of 'wages'. Notwithstanding the same and with open eyes the appellant bank chosen to give different definition to the terms 'salary' and 'pay'. It would mean that the intention of the bank while framing these Rules was to give gratuity to common cadre employees while determining the salary/pay which was payable under these Rules. If it is not turned out that the benefit under the Common Cadre Rules which is secured by the employees covered by these Rules is better and more beneficial, the bank cannot turn around to say that it would give the employees less gratuity as per the Gratuity Act.

(Para 21)

Harinder Singh Sidhu, Advocate, for the appellants in LPA No. 858, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886 and 887 of 2010 and for respondent No. 3 in CWP Nos. 13974, 13978, 13979, 13967 of 2010,

J.S.Puri, Addl. Advocate General, Punjab.

D.V.Sharma, Senior Advocate with Shivani Sharma, Advocate for respondents No. 1 to 7, 9 to 13 in LPA No. 876 of 2010 and for petitioners in CWP Nos. 13967, 13974, 13978, 13979 of 2010

and 21556 of 2011. Kulbir Singh Sekhon, Advocate with Anil Khetarpal, Advocate, for respondents No. 1 and 2 in LPA No. 877 of 2010, for respondent No. 2 in LPA No. 879 of 2010, for respondents No. 1 to 8 in LPA No. 887 of 2010,

H.C. Gupta, respondent No. 1 in person in LPA No. 882 of 2010.

Ashwani Prashar, Advocate, for respondent No. 3 in

Vikas Chatrath, Advocate and Ms. Silvi, Advocate.

A.K. SIKRI, CHIEF JUSTICE

(1) The appellant in all these appeals is the Punjab State Cooperative Bank Ltd. Chandigarh. These appeals arise out of the writ petitions filed by the respondents who were the petitioners in 13 writ petitions filed by them. Those writ petitions were taken up together along with Regular Second Appeal No. 69 of 2005 titled as 'The Managing Director, Punjab State Cooperative Bank Ltd. Chandigarh Versus Manjit Singh Sodhi and others'. The learned Single Judge dismissed the Regular Second Appeal of the appellant bank and benefit of that judgment was extended to the petitioners in other 13 writ petitions of the employees. Certain writ petitions which were filed by the appellant bank were also dismissed along with the Regular Second Appeal.

(2) All these cases were disposed of by the learned Single Judge vide common judgment dated 28.01.2010. In so far as judgment in Regular Second Appeal No. 69 of 2005 is concerned, as there is no further intra-court appeal (and in fact there is no further appeal under the Code of Civil Procedure) the bank had filed the Special Leave Petition No. 25631 of 2010 before the Supreme Court. In this Special Leave Petition, orders dated 27.07.2012 were passed by the Apex Court declining to interfere with the judgment of the learned Single Judge because of the reason that the decree passed by the Addl. Civil Judge (Senior Division), Sangrur as modified by the High Court vide impugned judgment had been satisfied by the bank making the payments to the sole contesting respondents. However, while dismissing the Special Leave Petition, the Supreme Court also clarified that in so far as the present appeals are concerned, they will have to be

considered on their on-merits. In view of the aforesaid, these appeals were set-down for final hearing and we have heard learned counsel for the parties at length.

(3) These appeals can be put into two categories. Letters Patent Appeals No. 878, 880, 881, 882, 885 and 886 fall in first category. Civil Writ Petition Nos. 13967, 13974, 13978 and 13979 of 2010 and 21556 of 2011 are also taken up along with the same as the same also fall in this category. Other appeals, namely, Letters Patent Appeals No. 876, 877, 879, 883, 884 and 887 of 2010 fall in second category.

(4) Before we take up all these appeals, it would be better to consider the circumstances leading to filing of Regular Second Appeal No. 69 of 2005, the issue involved therein and the decision of the learned Single Judge. That was a case where an employee of the appellant bank had filed a civil suit bearing No. 22/3/2/2000 titled as Manjit Singh Sodhi and others Versus The Managing Director, Punjab State Cooperative Bank Ltd. Chandigarh before the Civil Court for grant of payment of gratuity. He had claimed that he was entitled to gratuity equal to 22 months of salary amounting to Rs. 2,56,014/- on the basis of the pay and emoluments he was drawing but he had been only paid a sum of Rs. 2,05,384/-. He thus prayed for release of short payment of ` 50,130/- alongwith 18% interest per annum. His submission was that as per the Last Pay Certificate (LPC) issued to him, his basic pay was Rs. 5100/-, medical allowance Rs. 125/-, dearness allowance Rs. 5202/-, interim relief Rs. 710/- and house rent allowance Rs. 2500/-, thus making a total salary of Rs. 11,637/- along with perks. He wanted gratuity to be calculated on this last pay.

(5) The appellant bank contested the said suit and in the written statement defence taken was that the said employee was entitled to the gratuity for the service rendered which was 31 years 11 months and 25 days and not 32 years as alleged by the plaintiff. According to the appellant bank, the plaintiff was entitled to gratuity of 21 months of service and not 22 months as claimed by him. It was also pleaded that the gratuity was to be calculated only on the basic pay plus dearness allowance and interim relief but house rent and medical allowance were not to be calculated as part of salary for calculating the gratuity.

(6) We are eschewing the discussion in so far as question of payment of gratuity of 21 months or 22 months is concerned as that was on the facts of that suit relating to that employee only. The entire issue in the present appeals is as to what would constitute last drawn salary for the purpose of payment of gratuity and whether House Rent Allowance and medical allowance are to be included or not. The trial Court decided the issues in favour of the plaintiff and decreed the suit rejecting the contention of the appellant bank on the ground that the gratuity was payable as per the Common Cadre Rules where salary was defined to include all other remunerations drawn as salary. The appellant bank filed appeal which was dismissed by the First Appellate Court upholding the judgment of the trial Court. The learned Single Judge in the aforesaid R.S.A. No. 69 of 2005 upheld the judgments of the Courts below. The only modification which was made was that the interest of 18% per annum granted by the Courts below was reduced to 8% per annum from the date the amount became due till the date of payment.

(7) Before the learned Single Judge the plea raised by the appellant bank was that while considering the definition of 'wages' as per the Punjab State Cooperative Financing Institution Service (Common Cadre), Rules, 1970-71 (for short "Common Cadre Rules") the Courts below had failed to take into consideration the definition of wages as provided under the Payment of Gratuity Act, 1972 (for short 'the Gratuity Act') which specifically excludes bonus, commission, house rent allowance and over time wages and any other allowances.

(8) Before we proceed further to discuss the judgment of the learned Single Judge, it would be apposite to take note of definition of 'wages' as per the Common Cadre Rules of the appellant bank and the term as defined under the Gratuity Act.

Section 2(s) of the Payment of Gratuity Act, 1972 gives the definition of wages which reads as under:-

"2(s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance."

(9) On the other hand, the appellant bank has framed Common Cadre Rules. Rule 2 (C) of the Common Cadre Rules states that pay was held to mean “average salary inclusive of other remuneration drawn in salary during the last 12 months”. Rule 1.3(k) defines salary as “salary means the basic monthly pay inclusive of any other emoluments treated as pay”. From the aforesaid definition, it is clear that if one is to go by the definition of wages contained in the Gratuity Act, then house rent and medical allowances or other allowances would not be included. The only allowances which are part of wages and specifically included are Dearness Allowance and interim reliefs. However, if the definitions of ‘pay’ and ‘salary’ are to be taken from Common Cadre Rules, it includes not only the basic monthly pay but “any other emoluments treated as pay”.

(10) In this backdrop, two aspects arose for consideration, namely:-

(i) whether the definition of ‘wages’ under the Gratuity Act was to be taken into consideration while paying gratuity to the employees or it was the Common Cadre Rule and particularly Annexure P-5 which specifically provides Rules ‘for payment of gratuity’ are applicable?.

(ii) In case Common Cadre Rules are applicable, whether house rent allowance and medical allowances are to be treated as part of ‘pay’?

(11) In so far as first issue is concerned, the argument of the appellant bank before the learned Single Judge was that in view of Section 14 of the Gratuity Act, the provisions of this Act have an overriding effect, notwithstanding anything contained inconsistent therewith in any enactment, any other act or any instrument.

(12) That be so, however, Sub Section (5) of Section 4 of the Gratuity Act provides 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”. In order to escape from the rigor of this exception, the appellant bank contended that Common Cadre Rules being statutory Rules cannot be termed as an award, agreement or contract and it is only better terms under any award, agreement or contract which were projected. This contention, however, has not been accepted by the learned Single Judge giving reason that the Gratuity Act is a beneficial legislation

primarily aimed at protecting the rights of the employees and was to lay down minimum standard of payment and therefore, it could not be said to mean that if there are better terms agreed to by the employer under any other instrument, lesser beneficial terms contained in the Gratuity Act would prevail than those terms. As per the learned Single Judge, it is more beneficial enactment which has to prevail and therefore, Section 4(5) of the Gratuity Act would apply to other enactment or Rules or statutes as well when such enactment, Rules or statutes provide for better payment of gratuity than the one contained under the Gratuity Act.

(13) Discussing the second issue, namely, the definition of 'pay' or 'salary' under the Common Cadre Rules, the learned Single Judge opined that the pay would include salary as well as other remunerations drawn as salary. Since Rule 1.3(k) stipulates that salary means the basic monthly pay inclusive of any other emoluments treated as pay", not only the basic pay but other emoluments which are drawn as salary are to be treated as pay. Since terms 'emoluments' and 'remunerations' are not defined under the Common Cadre Rules, the learned Single Judge deemed it fair to look for the literal meaning of these terms, i.e. the dictionary meaning, which is the yardstick to be adopted as held by the Supreme Court in case *Gestetner Duplicators Pvt. Ltd. versus Commissioner of Income-tax, West Bengal (1)*, *Director Central Plantation Crops Research Institute, Kesaragod and others versus M.Purushothaman and other (2)*, as well as *State Bank of India and others versus K.P.Subbaiah and others (3)*, and few other judgments. Relevant discussion in this behalf proceeds as under:-

"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 can not be said that house rent allowance or medical allowance is not being paid on

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- (1) (1979) 2 SCC 354
 - (2) AIR 1994 SC 2541
 - (3) (2003) 11 SCC 646

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.”

(14) We would like to point out at the out set that the arguments before us advanced by Mr. H.S.Sidhu, learned counsel appearing for the appellant bank were on the same lines. In nut-shell he bracketed his legal submissions as under:-

(i) Gratuity Act is complete Code. Inconsistency therewith would include provisions whether more or less beneficial.

Beneficial provisions will apply only if covered under the exceptions under Section 4(5) and Section 5.

It is settled law that inconsistency will be inferred in a case where the legislation evinces intention to cover the entire field. (AIR 1994 SC 1284, 1990(2) SCC 562 and 2001(4) SCC 104.

(ii) Section 4(5) of the Payment of Gratuity Act only saves better terms payable under awards, agreements or contracts and does not save better terms under any statute or rule which are to be saved by a notification under Section 5 of the Act.

*It is submitted that Section 4(5) of the Act would not be applicable in the present case as the Common Cadre Rules being statutory are not comprehended within the terms 'award of agreement or contract'. It is submitted that the terms award, agreement and contract have a definite legal connotation and do not and cannot include statutory rules. The provisions of Section 4(5) of the Act have been interpreted in **The workmen of Metro Theatre Ltd., Bombay Vs. M/s Metro Theatre Ltd., Bombay, AIR 1981 Supreme Court 1685**, as being limited to awards, agreements or contracts as existing better terms are intended to be covered by a notification under Section 5 of the Gratuity Act.*

(iii) Better terms under existing statutory provisions or Rules are to be saved by exemption notification under Section 5 of the Payment of Gratuity Act. (Municipal Corporation of Delhi Vs. Dharam Parkash Sharma 1998(7) SCC 221 and Allahabad Bank

*Vs. All India Allahabad Bank Retired Employees Association
2010(2) SCC 44.*

(15) Questioning the reasoning given by the learned Single Judge in the impugned judgment, he made the following submissions:-

(a) That in view of clear language of Section 4(5) of the Gratuity Act excluding more beneficial provisions only in the form of award or agreement or contract, the learned Single Judge was wrong in holding that it would include rules or enactment as well. According to Mr. Sidhu, by adding Rules and enactments also, the learned Single Judge ventured into the arena of judicial legislation which course was not permissible and this even rendered the provisions of Section 5 of the Gratuity Act redundant. He referred to the following judgments in this behalf:-

(i) Unique Butyle Tube Industries(P) Ltd. versus U.P. Financial Corporation (2003) 2 SCC 455, and

(ii) Institute of Chartered Accountants of India versus Price Waterhouse 1997(6) SCC 312.

*(b) That obiter observations made in **EID Parry(I) Ltd.** case (supra) and **Sham Dulari's** case (supra) were referred to and relied upon ignoring the binding ratio in **Metro Theater Ltd.** case (supra) and **Dharam Parkash Sharma's** case (supra), which clearly held that Gratuity Act was a complete code in itself.*

*(c) That even otherwise the learned Single Judge wrongly held that house rent allowance and medical allowance are to be included in the term pay for calculating gratuity. In this behalf he argued that the key words in the definitions of pay and salary in the Common Cadre Rules are 'remuneration drawn as salary' and 'emoluments treated as pay'. The rules do not envisage that every remuneration or emolument is to be treated as pay. It is in this context that a reference to the definitions of pay in the Fundamental Rules and in the Civil Services Rules was pertinent and relevant and would be decisive. In **Director Central Plantation Crops Research Institute, Kesaragod and others versus M. Purushothaman and others** AIR 1994 Supreme Court*

2541, the Apex Court interpreted the term 'pay' under fundamental rules. In **State Bank of India and others versus K.P.Subbaiah and others 2003(11) Supreme Court Cases 646**, the meaning of 'pay' in the context of service jurisprudence has been explained. In **Union of India versus Justice S.S.Sandhawalia (Retd.) AIR 1994 SC 1377** it has been held that while computing the cash equivalent of leave encashment, the house rent allowance and city compensatory allowance are to be excluded.

(d) That on principle also, the house rent allowance and medical allowance cannot be treated as a part of salary, because house rent is only to compensate for inability to provide for the housing accommodation and moreover it varies from place to place. Medical allowance is also varied from time to time as per the policy and some times a fixed medical allowance and some times the actual cost is reimbursed for treatment. He further submitted that including these two items in the total for calculating the gratuity is on principle bad and not sustainable besides it will result in discrimination between employees of the same rank posted in different places. The house rent allowance varies from 10% to 20% depending on the classification of cities as 'A' or 'B' or 'C' Class. It is further submitted that neither in the Central Civil Services Rules nor in the Punjab Civil Services Rules, these allowances are included in the term pay for the purposes of calculating gratuity.

(e) That the impugned judgment would result in discrimination between Common Cadre and Non-Common Cadre Employees. In this behalf, he submitted that the employees of the appellant bank fall in two major categories, one forming part of the Common Cadre who are governed by the Punjab State Cooperative Financing Institutions Service (Common Cadre) Rules, 1970 and the other who do not constitute the Common Cadre. In the Common Cadre Rules, there are provisions in Chapter V of Punjab State Cooperative Financing Institutions Service (Common Cadre) Rules, 1970 relating to payment of gratuity but there are no provisions relating to payment of gratuity in the Punjab State Cooperative Financing Institutions Services Rules, 1958 which govern the non-common cadre employees in the Cooperative Financing Institutions and gratuity to

them is being paid as per the Payment of Gratuity Act, 1972. Employees' upto the rank of Assistant Manager are known as Non Common Cadre Employees and their service conditions are governed by the 1958 Rules and employees from the post of Manager and above are Common Cadre Employees and their service conditions are governed by Common Cadre Rules, 1970.

(16) Learned counsel for the respondents countered the aforesaid submissions by primarily relying upon the reasons given by the learned Single Judge in the impugned judgment. In nut-shell, it was argued that:-

(i) Firstly, Sub Section 5 of Section 4 of the Gratuity Act saves the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. It is not disputed that the Common Cadre Rules provide for better terms of gratuity as compared to the provisions of the Payment of Gratuity Act, 1972 and therefore, sub section 5 of Section 4 of the Gratuity Act saves the common cadre employees.

(ii) Secondly, Section 14 of the Gratuity Act does not give the Act absolute over-riding effect to the provisions of the Act. The provisions of the Gratuity Act would over-ride only if the provisions of the Act, instrument or contract are inconsistent with the provisions of the Payment of Gratuity Act. The word 'inconsistent' qualifies the over-riding effect given to the Gratuity Act.

(iii) Thirdly, Section 5 of the Gratuity act deals with the powers of an appropriate government to grant exemption from applicability of the Act in case the provisions of the Act apply. Section 4(5) of the Gratuity Act provides that if better terms of gratuity are payable through any agreement, contract or award, the provisions of the Payment of Gratuity Act would not apply. Therefore, Section 5 of the Act has no application. It is alleged that significant words in Section 5 of the Gratuity Act are 'any establishment, factory, mine, oil field, plantation, port, Railway Station or the shop to which this Gratuity Act applies.

(iv) Fourthly, Section 5 deals with the exemption, when the Government is of the opinion that there is no need for application of the Gratuity Act. As far as payment of gratuity under any other enactment, award, agreement or contract would be governed by sub section 5 of Section 4 and not by Section 5 of the Gratuity Act.

(17) In so far as inclusion of house rent allowance and medical allowance in 'pay' for the purpose of calculating gratuity is concerned, learned counsel for the respondents referred to the term 'salary' as defined in Concise Oxford English Dictionary (10th Edition) as well as Common Cadre Rules. It was also pointed out that the appellant bank has been calculating the amount of gratuity by including not only salary but other emoluments inclusive of house rent allowance and fixed medical allowance itself. Even the Accountant General, Punjab, while making calculations, included house rent allowance as well as the fixed medical allowance.

(18) Learned counsel for the respondents also relied upon the provisions of Sections 15, 16 and 17 of the Income Tax Act, 1961 which define and elaborate salary, perquisites and profits in lieu of salary. It is argued that in case *Karamchhari Union versus Union of India* (4), house rent allowance has been held to be part of the salary and in that case the provisions of the Income Tax Act and Rules were also discussed. Similarly, in case *State Bank of India versus K.P. Subbaiah and others* (5), 'pay' has been held to be essentially consideration for the services rendered by an employee and is the remuneration which is payable to him. In that case it is further held that remuneration is the recurring payment of services rendered during the term of employee. It is further argued by learned counsel for the respondents that the word 'wages' has been defined in Section 2(rr) of the Industrial Disputes Act, 1947 and clause (ii) includes the value of any house accommodation and medical allowance in the term 'wages'.

(19) We have minutely gone through the various judgments cited by learned counsel for the parties on the basis of which they have made their respective submissions and have also examined in depth the reasons given by the learned Single Judge in the impugned judgment. After undertaking

(4) (2000) 3 SCC 335

(5) (2003) 11 SCC 646

this exercise, we are of the firm opinion that the impugned judgments give right perspective of the entire issue and the conclusions drawn by the learned Single Judge do not call for any interference.

(20) In the first instance, we would like to emphasize that it is the appellant bank itself which has framed Common Cadre Rules. Appendix-V thereof contains the provisions for payment of gratuity. Thus these rules which are specifically made applicable to Common Cadre Employees govern the service conditions qua gratuity and after all, these Rules are not made to be ignored. The appellant bank cannot give the benefit to the employees under these Rules in so far as payment of gratuity is concerned by one hand and seeks to take away the same by another hand taking pretext of the provisions contained in the Payment of Gratuity Act. The bank at the time of framing of these Rules was well aware of the provisions contained in the Gratuity Act. Obviously, the definition of 'wages' under the Gratuity Act, was known to the bank, which excludes such allowances from the definition of 'wages'. Notwithstanding the same and with open eyes the appellant bank chosen to give different definition to the terms 'salary' and 'pay'. It would mean that the intention of the bank while framing these Rules was to give gratuity to common cadre employees while determining the salary/pay which was payable under these Rules. If it is not turned out that the benefit under the Common Cadre Rules which is secured by the employees covered by these Rules is better and more beneficial, the bank cannot turn around to say that it would give the employees less gratuity as per the Gratuity Act.

(21) We would like to reproduce the following discussion in the impugned judgment after taking note of the judgment of the Supreme Court in case *EID Parry (I) Ltd. versus G Omkar Murthy and others (6)*, and that of Allahabad High Court in case *Bank of Baroda versus Controlling Authority under Payment of Gratuity Act and others (7)* :-

“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

(6) (2001) 4 SCC 68

(7) 2008 11 SCT 7

arise at all. It has been very aptly observed that both the enactments can co-exist.

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.”

(22) In support of this view, learned Single Judge has also collected extensively from Supreme Court judgment in case *The workmen of Metro Theatre Ltd., Bombay* versus *M/s Metro Theatre Ltd., Bombay* (8), AIR 1981 Supreme Court 1685, (though that judgment was cited by the appellant bank), wherein it is also observed by the Supreme Court 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 be conferred on an employee in future.

(23) We would also like to reproduce the following paras from the impugned judgment which reflect the mind of the learned Single Judge in taking the aforesaid particular view:-

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 DTC Retired Employees, Association and others v. Delhi Transport Corporation and others (2001) 6 S.C.C. 61, 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.

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 entitled 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.

(24) While interpreting Section 5 of the Gratuity Act, it is to be kept in mind that it talks of exempting any establishment and such an exemption is to be granted when such employees or class of employees or establishments are in receipt of gratuity or pensionable benefits 'not less favourable than the benefit conferred under this Act'. It is in those cases that the Government gives exemption of the provisions of the Gratuity Act as the employees enjoy better terms of gratuity because of in house scheme.

(25) If the plea raised about over-riding effect, as contended by the appellant, is accepted, that would defeat the very purpose of the Act reflected in Section 5 thereof. In EID Parry's case (supra), the Supreme Court had made these observations as well:-

"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.

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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 coexist in a concern."

(26) In view of above, it is difficult to accept the contention of Mr. Sidhu, predicated on the language of Section 4(5) of the Gratuity Act or that the learned Single Judge has by the aforesaid interpretation undertaken the task of judicial legislation. We do not perceive it to be so. In our view,

the learned Single Judge has simply interpreted the provisions in the light of the judgments of the Supreme Court. It is further wrong to contend that the ratio of these judgments is ignored and the obiter observations are followed. We thus are of the opinion that those employees of the appellant bank who are governed by the Common Cadre Rules will have to be paid the gratuity as per these Rules which would entitle them for better terms of gratuity, if it turns out to be so.

(27) Coming to the second issue as to whether the house rent allowance and medical allowance are included in the term of 'pay' for calculating gratuity, the entire focus has to be as to what is the meaning to be assigned to the expression 'emoluments treated as pay' and 'remuneration drawn as salary' accruing therein. Admittedly, the term salary or pay is not defined under the Common Cadre Rules.

(28) On one hand, learned counsel for the appellants wants definition to be taken from fundamental Rules and Civil Services Rules whereas on the other hand, learned counsel for the respondents insists that it is the dictionary meaning of these terms which need to be given due weightage.

(29) Learned Single Judge has resorted to the literal meaning of the terms 'emoluments' and 'remuneration', that is the dictionary meaning of these expressions in the absence of definition of these terms under the Common Cadre Rules. For adopting this course of action, learned Single Judge has relied upon the judgment of the Supreme Court in *Gestetner Duplicators Pvt. Ltd. versus Commissioner of Income-tax, West Bengal* (9).

(30) Learned counsel for the appellants, however, relied upon the judgment of the Supreme Court in case of *M. Purushothaman's case* (supra) and submitted that the term 'pay' interpreted therein by the Supreme Court should be the yardstick in determining whether the other emoluments or remunerations would be included therein or not. However, that was a case where the special pay appearing in the fundamental rules was interpreted. Admittedly, these fundamental Rules framed by the Central Government apply to the Central Government employees and not to the employees of the State Government. Taking note of the fact that the term 'pay' is

specifically defined in the fundamental rules, another judgment was cited before the learned Single Judge but the learned Single Judge did not accept his submission and preferred to go by the dictionary meaning of the term 'salary'. Reasons given for adopting this course of action are as follows:-

"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. 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 v. K.P. Subbaiah and others, 2003 (11) S.C.C. 646 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 inter changeable 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.

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.”

(31) We are in complete agreement with the aforesaid approach of the learned Single Judge. It would also be worthwhile to refer to the decision of this Court in Civil Writ Petition No. 1182 of 1997 which has been followed by the learned Single Judge in the following manner:-

“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.”

(32) We are, therefore, of the opinion that in the absence of these terms having been defined in the Common Cadre Rules, dictionary meaning which is generally prevalent has to be assigned. Once the matter is to be looked into from that perspective, no fault can be founded with the judgment of the learned Single Judge. As a consequence, the Letters Patent Appeals No. 878, 880, 881, 882, 885 and 886, which fall in 1st Category, fail and are hereby dismissed.

It is necessary to mention at this stage that in LPA No. 882 of 2010, respondent No.1, namely, Hari Chand, who appeared in person, has submitted that the interest which is reduced from 18% per annum to 8% per annum by the learned Single Judge should be restored back to 18% per annum. However, this prayer cannot be granted as the respondents have not challenged the impugned order by filing an appeal and they cannot claim the benefit in appeals filed by the State.

IIInd Category

(33) As was mentioned in the beginning of this judgment, the Letters Patent Appeals No. 876, 877, 879, 883, 884 and 887 fall in second category. These appeals arise out of the writ petitions which were filed by the private respondents herein challenging the communication issued by the Registrar, Cooperative Societies, Punjab for withdrawing the approval from the Common Cadre Rules vide communication dated 19.10.2005. On that basis, the appellant bank wanted to pay the gratuity under the Gratuity Act and not under the Common Cadre Rules. Submission of the respondents (petitioners in the writ petitions) was that the Common Cadre Rules were made applicable to these respondents prior to 24.08.1998 and once the

right had accrued to these employees to receive their gratuity under 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. Learned Single Judge has accepted the contention that the accrued right could not be extinguished by making an order which has retrospective effect as held in catena of judgments and few of them as noted by the learned Single are as follow:-

(i) Kerala Electrical and Allied Engg. Co. Ltd. versus Raveendran Pillai (10).

(ii) Chairman Railway Board versus C.R. Rangadhamaiah (11)

(iii) State of Gujarat and Another versus Raman Lal Keshav Lal Soni and Others (12).

(iv) Y.R. Shenoy and Others versus Syndicate Bank and Others (13)

On the basis of the aforesaid judgments, the learned Single Judge has concluded as follows:-

“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

(10) 1999 (4) SC T 206

(11) AIR 1997 SC 3828

(12) 1983 (2) SCR 287

(13) 2003 (4) SC T 368

the employees governed by the Common Cadre Rules after 24th August, 1998. This issue is left open.”

(34) There could hardly be any argument made by the learned counsel for the appellants to dislodge the aforesaid proposition of law. These appeals are bereft of any merit and are hereby dismissed.

**Civil Writ Petitions No. 13967, 13974, 13978, 13979 of 2010
and 21556 of 2011**

(35) In these writ petitions, the petitioners have challenged the same order of the Registrar Cooperative Societies, Punjab, Chandigarh whereby the Common Cadre Rules have been amended and it has been provided that the employees will be paid gratuity according to the Payment of Gratuity Act, 1972 instead of Rule 3.1.1 read with Annexure-V of the Common Cadre Rules. As noted above, in the appeals falling in 2nd Category, the learned Single Judge has held that the right accrued to the employees could not be taken away retrospectively. Since we have upheld that order, the petitioners herein would be entitled to the same benefits.

(36) However, learned counsel for the respondents/bank has made two fold submissions on the basis of which it was argued that relief to the petitioners be denied. In the first instance, it was argued by learned counsel for the respondent-bank that the Bank is not a State under Article 12 of the Constitution and therefore, writ petitions are not maintainable. Reference in this behalf is drawn to so many judgments. It is not necessary to discuss all those judgments as we proceed on the basis that the bank is not a State under Article 12 of the Constitution. However, what is challenge is the order of the Registrar of the Cooperative Societies, Punjab and the writ petitions under Article 226 of the Constitution of India would be maintainable against it. Reference in this regard is made to the judgment of the Apex Court in case *Zee Telefilms Limited & another versus Union of India and others* (14).

(37) In the second instance, it was argued that the above mentioned petitions filed by the petitioners are barred by delay as the petitioners are seeking quashing of letter dated 24.08.1998 and 19.10.2005 issued by the Registrar, Cooperative Societies, Punjab, Chandigarh but the petitions have

been filed only in the years 2010 and 2011. That may be so. However, once these very orders are set-aside by the learned Single Judge in the writ petitions which were filed earlier and allowing the writ petitions by the impugned order holding that such employees are to be paid gratuity as per the Common Cadre Rules, normally, the benefit of that judgment should have been extended to these petitioners as well who are similarly situated. Normally, even this delay would not have been arisen to dislodge the petitioners as the matter was pending consideration in these Letters Patent Appeals. However, what is important is that these petitioners retired long ago and even accepted the payment of gratuity under the Payment of Gratuity Act, 1972. They did not challenge that action at that time. It is only after the judgment of the learned Single Judge that these petitioners woke up and filed these writ petitions. As these petitioners have approached the Court belatedly, the order extending the benefit of the judgment of the learned Single Judge to these petitioners as well, namely, the payment of gratuity under the Common Cadre Rules, the difference payable would be given to these petitioners without any interest within two months from the date of receipt of copy of this judgment. However, if the payment is not made within two months, then after expiry of two months, these petitioners shall also be entitled to interest on differential at the rate of 8% per annum. Writ petitions are allowed and disposed of in the aforesaid terms.

S. Gupta