

BEFORE THE APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT,1972 AND DEPUTY
CHIEF LABOUR COMMISSIONER (CENTRAL),SHRAM BHAWAN, JAGJIVAN NAGAR,DHANBAD :
826003

Gratuity Appeal No.24/2018-A.7

[Arising out of decision dated 26/06/2018 of the Controlling Authority and Regional Labour Commissioner (Central),Ranchi in
Gratuity Application No. 36 (31)/2016-RLC(R)]

The Chairman,
Jharkhand Gramin Bank,
Head Office : Rajendra Place,
5,Main Road,Ranchi : 834001

Appellant

vrs

Shri Ashok Kumar Prasad,
s/o Lochan Prasad Sahu,
"Saurabh Kunj",Birsa Vihar,
Punchsheel Nagar Road No.2,
Pandra, Post : Hehal,Dist : Ranchi : 834005

Respondent

APPEARANCE

Shri Vijay Kumar,Advocate
Shri Rahul Kumar,Advocate

Counsels for Appellant

Shri Ashok Kumar Prasad

Respondent in person

PRESENT

AJAYA KUMAR SAMANTARAY

**APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT,1972 AND
DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL),DHANBAD**

DECISION DATED 15TH NOVEMBER 2018

The instant appeal has been preferred by the Chairman, Jharkhand Gramin Bank under sub-section (7) of Section 7 of payment of Gratuity Act,1972 wherein the decision dated 26th June 2018 of the Controlling Authority in Gratuity Application No.36 (31)/2016-RLC (R) has been assailed.

The Appellant has urged the following contentions in the Memorandum of Appeal :

(1) That in the instant appeal, the appellant prays for setting aside the order / findings dated 15.06.18 passed in P .G. Application No. 36(31)/2016-RLC(R) issued on 26.06.18 and received by the appellant on 28.06.18.

(2) That the appellant is the original opponent and is the Chairman of the Jharkhand Gramin Bank, sponsored by Bank of India, which has been established on 12th June, 2006, consequent upon amalgamation of four erstwhile Regional Rural Banks , namely, Ranchi Kshetriya Gramin

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Bank, Singhbhum Kshetriya Gramin Bank, Hazaribag Kshetriya Gramin Bank, and Giridih Kshetriya Gramin Bank. The amalgamation took place vide Government of India Notification No. F.No.114/2006 dated 12.06.2006, and the amalgamated entity, Jharkhand Gramin Bank, continues to function under the ambit of the Regional Rural Banks Act, 1976, an Act enacted by the Government of India.(sic Parliament).

3. That S. 30 of the Regional Rural Banks Act, 1976, enables the authority to make Regulations to be followed :

"S. 30. Power to make regulations.-

(1) The Board of Directors of a Regional Rural Bank may, after consultation with the Sponsor Bank and the National Bank and with the previous sanction of the Central Government by notification in the Official Gazette, make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act.

(2) Every regulation shall, as soon as may be after it is made under this Act by the Board of directors, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

5. That upon publication of the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010, all service conditions of the officers and employees of the appellant (including the respondent no. 1) are governed by the same.

6. That Regulation 72 contained Chapter VII of the Jharkhand Gramin Bank (Officers and Employees) Service 2010 deals with Gratuity and the same reads as under :

"72. Gratuity.-

(1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher.

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(2) Every officer or employee shall be eligible for gratuity on, -

(a) retirement, (b) death, (c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or (d) resignation after completing 10 years of continuous service, or (e) termination of service in any other way except by way of punishment after completion of 10 years of service:

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay:

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years:

Provided further that in respect of an officer the gratuity is payable based on the last pay draw:

Provided also that in respect of an employee pay for the purposes of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be."

That further, as per the 10th Bipartite Settlement / Joint Note dated 25.05.15, Special allowance with D.A. thereon shall not be reckoned for the superannuation benefits including gratuity.

8. That further Regulation 2.1 (m) defines pay as:

"(m) Pay means basic pay drawn per month by the officer or employee in a pay-scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations."

9. That as is evident, the officer is entitled to gratuity as per the Regulation or the Payment of Gratuity Act, whichever is higher. However, he cannot elect pick and choose best parts of both.

10. That the respondent no. 1 herein was an officer in Scale III at the time of retirement. He joined on 05.01.1981 and worked till his superannuation on 31.08.16. As such the applicant completed 35 years, 7 months and 26 days of service till his date of retirement.

11. That on 29.08.16, the respondent no. 1 submitted application for payment of gratuity claiming amount of Rs. 10,35,900/- as per the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 and hence the respondent no. 1 himself elected to be governed by it and not by the Payment of Gratuity Act.

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12. That upon receipt of the application, the same was processed in terms of the Regulations and the amount was calculated and Rs. 10,28,720/- (net of TDS) was paid to the respondent No. 1 on 01.09.16.

13. That as per S. 4 (3) of the Payment of Gratuity Act, 1972, the amount of gratuity payable to an employee shall not exceed Ten Lakh rupees.

14. That as the Gratuity of the respondent No. 1 was higher under the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 than the Payment of Gratuity Act, 1972 and hence the higher amount of gratuity was paid to the respondent No. 1.

15. That further, the amount was paid as per the respondent no. 1's own claim and hence even otherwise he is estopped in law in contending otherwise

16. That after receipt of payment, the respondent no. 1 filed an application under Form 'N' with annexures before the respondent no. 2 on 18.11.16 initially praying therein to determine the amount of gratuity payable to him and further declared the total gratuity amount to be Rs. 15,07,234.50 and demanded for payment of further Rs. 4,71,334.50 only which was registered as Application No. 36 (31) / 20 16-RLC(R).

17. That the applicant sought to amend the relief. However, no order permitting amendment was passed to the best of the knowledge of the appellant.

18. That the appellant duly appeared before the respondent no. 2 and filed its written statement and expressly brought the aforesaid facts to the knowledge of the respondent no. 2.

19. That after hearing the parties, the respondent no. 2 passed the following order:

In view of the above, I determine the gratuity In respect of the applicant is as under:

Date of Appointment	05.01.1981
Date of Retirement	31.08.2016
Length of completed year of service for which , gratuity is payable	35 years.7 months 27 days
Last Wages Drawn	Rs . 90,035.30 (BP + DA + PQP + Special allowance + DA on Special Allowance)
Amount of gratuity payable	
a) For the first 30 years	Rs. $\frac{90,035.30 * 30 * 15}{26}$ = Rs. 15,58,303.26
b) For beyond 30 years of service i.e.	Rs. $\frac{90,35,900.00 * 6 * 45}{26}$ = Rs. 9,34,981.96
	5 years, 7 months and 27 days
Total amount of gratuity payable (a+b)	Rs.24,93,285.22 rounded off Rs. 24,93,285.00
Amount of gratuity already paid to the Applicant	Rs.10,35,900.00
Balance amount of gratuity to be paid Applicant	Rs.14,57,385/--(Rupees Fourteen lakh fifty seven three hundred eighty five only)

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Thus the applicant is entitled differential/balance amount of gratuity amount to Rs. 14,57,385/- (Rupees Fourteen lakhs fifty seven thousand three hundred eighty five only) .

20, That the respondent no. 2 further considered the aspect of interest and in spite of acknowledging that the gratuity amount as claimed and as determined by the appellant was duly paid, held that since the amount was not deposited with the Controlling Authority and as such the appellant is liable to pay interest thereon and accordingly calculated the interest component up to 31.05.18 amounting to Rs. 2,55,042/- and thereby directed the appellant to pay a total sum of Rs. 17,12,427/- to the respondent no. 1 by its finding dt. 15 .06. 2018

21. That the appellant is depositing the awarded gratuity amount by DD Nos.581750 and 581751 dt. 24.07.2018 drawn in favour of "Deputy Chief Labour Commissioner (Central), Dhanbad" payable at Dhanbad .

22. That the appellant has not filed any appeal, review, revision against the impugned order / finding.

23. That this appeal is made bona fide and in the interest of justice.

The Appellant further says that being aggrieved by and dissatisfied with the order / finding dated 15.06.18 passed In P.G. Application No. 36(31)/2016-RLC(R) issued on 26.06.18 and received by the appellant on 28.06.18, the appellant begs to prefer this appeal on the following amongst other-

GROUND OF THE APPEAL

i) For that the impugned order is bad in law and to the facts of the case.

ii) For that the Controlling Authority has erred in not considering that the respondent no. 1 had himself claimed a sum of Rs. 10,35,9001- which was paid and hence the respondent no. 1's further claim is barred under the Doctrine of Waiver, Estoppel and Acquiescence.

iii) For that the Learned Controlling Authority has erred in not considering the provisions of the Payment of Gratuity Act, 1972, Regional Rural Banks Act, 1976 and the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 in its true letter and spirit.

iv) For that the Controlling Authority has erred in not considering that the Regulation mandates computation of gratuity on the basis of 'pay' which is specifically defined and not on the basis of 'wage' which is governed by the Payment of Gratuity Act.

v) For that the Learned Controlling Authority has erred in not considering that Regional Rural Banks Act, 1976 is a special enactment which has been enacted subsequently to the P.G. Act, 1972 and as per S. 32 thereof, the same has overriding effect.

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vi) For that the Controlling Authority has erred in invoking the provisions of both the Payment of Gratuity Act and the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 to arrive at a higher and unclaimed amount of gratuity, which is impermissible.

vii) For that the Controlling Authority has erred in not considering that either of two i.e. either the Payment of Gratuity Act or the Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 was applicable and provisions of one cannot and ought not to be read into another.

viii) For that the Controlling Authority has erred in redefining the aspect of 'Pay' which has expressly been defined under Jharkhand Gramin Bank (Officers and Employees) Service Regulations 2010 and the same was unambiguous and warranted no interpretation .

ix) For that the Controlling Authority has erred In not considering the aspect that since the applicant was an 'Officer' and hence only his last pay drawn was to be taken into account and pay has been defined under Regulation 2.1 (m) to mean basic pay drawn per month by the officer or employee in a pay-scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulation

x) For that the Controlling Authority has erred in not considering that no further emoluments have been added to the definition of 'pay' and hence nothing can be added thereto.

xi) For that the Controlling Authority has erred in not considering that in fact in 10th Bipartite Settlement / Joint Note dated 25.05.15, it has been specifically agreed and mandated that Special allowance with D.A. thereon shall not be reckoned for the superannuation benefits including gratuity.

xii) For that the Controlling Authority has erred in not considering that the Bipartite Settlement also comes within the ambit of 'law' as it is a settlement therein and binding on all parties thereto i.e. the management and the officers.

xiii) For that the Controlling Authority has erred in holding that the 'pay' has been interpreted against its own regulations differently for officer and / or employee which is not the case herein and the same has been applied strictly as per the Regulations.

xv) For that the Controlling Authority has erred in not considering that 'pay' has been given specific meaning for the purposes of gratuity and hence general meaning of pay ought not to be invoked.

xvi) For that the Controlling Authority has erred in not considering that as per Regulation 72(3) 2nd Proviso, an officer is only entitled to gratuity payable based on the last pay drawn and not last wages drawn .

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xvii) For that the Controlling Authority has erred in not considering that the respondent no. 1 was an officer and not an employee and hence was entitled to specific amounts for the purposes of computation of pay as per the regulation and 'officer' is a special class and hence the regulation applicable to 'employee' cannot be made applicable to 'officer'.

xviii) For that the calculation arrived by the Controlling Authority is illegal and without any basis.

xix) For that the computation of last pay drawn is without any findings and is baseless and erroneous.

xx) For that the Controlling Authority. has erred in not considering that as per Regulation, 72(3), a maximum of 15 months pay is to be paid as gratuity and Regulation 72 (4) is an exception carved out therein wherein further 15 days pay for every completed year of service is to be paid over and above 30 years of service.

xxi) For that the Controlling Authority has erred in holding additional amount to be additional rate of gratuity to be added over and above the regular rate, which is not so and it is only in form of an exception for persons who have worked over and above 30 years.

xxii) For that the Controlling authority has further erred in not considering that additional amount of gratuity Was payable for each completed year of service beyond 30 years and hence since the respondent no. 1 has completed only 5 years of service as such he was entitled to additional gratuity for only 5 years and not 6 years .

xxiii) For that the Controlling authority has further erred in holding that the last pay drawn is for 26 days which is not so in as much as per Regulation 2(m), pay has been defined as basic pay drawn per month and same nowhere restricts to 26 days.

xxiv) For that the Controlling authority has further erred in holding that the last pay drawn is for 26 days and thereby has further erred in enhancing the same to 30 days, while the last pay drawn is for 30 days only.

xxv) For that the Controlling authority in spite of acknowledging that the amount as demanded by the respondent no. 1 was duly paid and since the amount was paid bona fide and as such as per the decision of the Hon'ble Madras High Court in W.A. 1478 of 2006 in P. Selvaraj v. the Management of Shardlow India, since there is no any deliberate delay in part of payment of gratuity on part of the management and hence it cannot be levied with the aspect of payment of interest on account of delayed payment of further amount.

xxvi) For that the Controlling Authority has further erred in not considering the decisions cited by the appellant of the Appellate Authority especially that In the case of Chairman, Pragati Krishna Grameen Bank, Bellary v. Sri B.K. Sathyanarayanrao which has also relied upon the judgment of the Hon'ble Supreme Court of India in the case *Beed District Central Co-operative*

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Bank Ltd. v. State of Maharashtra and others wherein it has specifically been held that a person cannot opt for both the terms in respect of payment of gratuity and can only be governed by one.

xxvii) For that the Learned Controlling Authority has erred in not considering the judgment dt. 16 July, 2014 of the Hon'ble Calcutta High Court in the case of *United Bank Of India vrs Sri Pranab Kumar Bhuiyan & Ors* wherein the Hon'ble Calcutta High Court has held that the decisions of the Controlling Authority and appellate authority that the provisions of the Gratuity Act would prevail over the Regulation, does not appear to be correct and that the said authority has failed to take into consideration the special nature of the Regulation.

xxviii) For that the Controlling Authority has erred in holding the appellant liable to make payment of further amount and also to pay interest thereon which is illegal and bad in law.

xxix) For that the appellant is not entitled to make payment of any further amount in the matter than that already paid.

xxx) For that other and further grounds shall be urged at the time of hearing .

The Appellant has placed reliance on a judgment of the Hon'ble Supreme Court in the case of *Beed District Central Co-operative Bank Ltd., vrs. State of Maharashtra and others* [2007 – I – LLJ – 1 = 2006 (111) FLR 710 wherein the issue to be determined by the Hon'ble Apex Court was follows :

WHETHER THE EMPLOYEES ARE ENTITLED TO GET BETTER TERMS OF GRATUITY IN ACCORDANCE WITH PAYMENT OF GRATUITY ACT, 1972 AS WELL AS THE SCHEME FOR GRATUITY OPERATIVE IN AN ESTABLISHMENT?

The Hon'ble Supreme Court answered the issue in the following language:

“It is significant that in the event the amount of gratuity is calculated at the rate of 26 days' salary for every completed year of service, vis-à-vis, 15 days' salary therefore, the tenure of an employee similarly situate will vary. Whereas in the former case an employee may receive the entire amount of gratuity while working for a lesser period, in the latter case an employee drawing the same salary will have to work for a longer period. We are therefore, of the opinion that the workman cannot opt for both the terms. Such a construction would defeat the purpose for which sub-section (5) of Section 4 has been enacted (italicised by this Authority for emphasis). For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside. The appeal is allowed. No costs”.

COUNTER STATEMENT OF THE RESPONDENT:

1. That he is Respondent No. 1 in this case (appeal) and as such he is well acquainted with facts and circumstances of the present case (appeal).

2. That he has gone through the contents of appeal under reply and understood the same fully.

3 That the instant P. G. Appeal under reply filed by the appellant is misconceived and devoid of any substance and as such the same is liable to be dismissed by this Hon'ble Court.

4. That it is stated that the instant appeal filed under Sub-section 7 of Section 7 of the Payment of Gratuity Act, 1972 by the appellant is not maintainable as the same will amount to second revision application.

5. That it is submitted that there is absolutely no illegality in the orders impugned dated 15.06.2018 passed by The Controlling Authority under Payment of Gratuity Act,1972 & the Regional Labour Commissioner (Central), Ranchi, herein the Respondent No. 2, in P. G. Application No. 36(31)/2016-RLC (R) issued on 26.06.2018 and received by the appellant on 28.06.2018 whereby and where under the Respondent No. 2 has directed the appellant to pay the balance amount of gratuity amounting to **Rs. 17,12,427/- (Rupees seventeen lakh, twelve thousand four hundred twenty seven only)** to Sri Ashok Kumar Prasad, herein the Respondent No. 1, within thirty days from the date of receipt of the order under intimation to the Controlling Authority.

6. That with regard to the statements made in paragraphs 2 to 6 of the appeal are the contents of the relevant portions of the Jharkhand Gramin Bank (Officers and Employees) Service Regulations, 2010 preferred by the appellant for its reference to this Hon'ble Court and as such the same are matters of record and need no reply.

7. That with regard to the statements made in paragraph 7 of the appeal, under reply, it is stated that the same are misleading and hereby denied because the concept of last wages drawn as per provision in the Gratuity Act connotes to emoluments whereas definition of pay or salary last drawn in the Regulations has been found contradictory in itself by the Controlling Authority while arriving at the findings in the P. G. Application itself as it has been differentiated in case of officers and employees as per Regulations and the same is not at all permissible in the eyes of law.

8. That with regard to the statement made in paragraphs 8 of the appeal, under reply, it is stated that the same are matters of record to be verified by the appellate authority and needs no reply.

9. That with regard to the statement made in paragraph- 9 of the appeal, under reply, it is stated that it is a matter of record to be verified by the Hon'ble Appellate Authority. Section 72 (1) of the Regulations reads as "An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub-regulation (2), whichever is higher." **Of course, the Respondent No. 1 is free to choose best parts of both because the definition of pay in the Regulations is defective and fractured to the extent that it does not include the components of emoluments as defined in the Act.** (highlighted by this Authority).

10. That with regard to the statement made in paragraph 10 of the appeal, under reply, it is stated that it is a matter of record to be verified by the by the Hon'ble Appellate Authority and needs no reply.

11. That with regard to the statement made in paragraph 11 of the appeal, under reply, it is stated that at that time the answering respondent no.1 was not aware about the actual calculation process and provisions in the Act and that is why he has opted for provisions of the Regulations, rather he was provided with the prescribed format and required figures to be mentioned by him for the purpose of formality only whereas the actual calculations were done at Regional Office level, but subsequently when it came to his knowledge that the concept of last wages drawn as per the Gratuity Act the amount of gratuity paid is less and disputed and that is why he preferred PG Application No.36(31)/2016-RLC (R) before the Controlling Authority under Payment of Gratuity Act, 1972 & the Regional Labour Commissioner (Central) Ranchi ,herein Respondent No. 2 for determination of the Gratuity under law and for the ends of Justice. He has also placed his reliance upon some important judgments/orders of the similarly situated persons and has annexed thereto mentioned herein below:-

(i) Order dated s" February 2015 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 and Regional Labour Commissioner (Central) Bellary in application No. 36(03)/2013 -RLC/BLY,

(ii) Order / Judgment dated 14.12.2012 passed by the Hon'ble Mr. Justice JAGDISH SINGH KHEHAR of the Hon'ble Supreme Court of India in CIVIL APPEAL NO. 9087 of 2012 (Arising out of SLP (Civil) No. 14570 of 2012 Y.K.Singla vrs. Punjab National Bank & Ors.

(iii) Order dated 06.10.2016 passed by The Controlling Authority under Payment of Gratuity Act, 1972 & the Assistant Labour Commissioner (Central), Siliguri in Application No.48 (1) 1 2015 1 ALC-S Sri Ashok Kumar Chowdhury vrs. The Chairman Uttarbanga Kshetriya Gramin Bank, Cooch Behar, West Bengal.

(iv) Order dated 12.07.2017 passed by The Controlling Authority under Payment of Gratuity Act, 1972 & the Assistant Labour Commissioner (Central), HYDRABAD in Application No. 48(102)/2016-E2 Sri B. Reddapa Reddy vrs. The General Manager Saptgiri Gramin Bank, Chitoor, Andhra Pradesh.

(v) Order dated 12.07.2017 passed by The Controlling Authority under Payment of Gratuity Act, 1972 & the Assistant Labour Commissioner (Central), HYDRABAD in Application No. 48/85/2016-E2 Sri P. Satyanarayana vrs. The General Manager Saptagiri Gramin Bank, Chitoor, Andhra Pradesh.

(vi) Order dated 20.03.2018 passed by The Controlling Authority under Payment of Gratuity Act, 1972 & the Assistant Labour Commissioner (Central), AJMER In Application No. AJ-48(98)/2017 -ALC Sri Gyan Bharati Goshwami vrs. The Chairman , Rajasthan Marudhar Gramin Bank, Jodhpur, Rajasthan.

(vii) And finally the most important Order/ Judgment dated 13.12.2017 of the Appellate Authority Under Payment of Gratuity Act, 1972 & the Deputy Chief Labour Commissioner (Central) ,Hyderabad passed in cases No.- PGA-36/21 to 44/2017 being calculated on the basis of last wages drawn by the concerned officers i.e. inclusive of Basic Pay + DA + PQA with DA etc, and analyzed " Better Terms" and additional amount at the rate of one half months of a month's pay.

(viii) Interim Order dated 07.02.2018 passed by Hon'ble Sri Justice Suresh Kumar Kait and Hon'ble Sri Justice Abhinand Kumar Shavilin in the High Court of Hyderabad in Writ Appeal no. 194 of 2018 in which declined to interfere with in I.A. No.1 of 2018 in W. P. No.1682 of 2018 passed by single judge, and passed the order to pay 50% amount.

(ix) Interim Order dated 19.03.2018 passed by Hon'ble Sri Justice Sanjay Kumar and Hon'ble Sri Justice M. Ganga Rao in the High Court of Hyderabad in Writ APPEAL No. 451 of 2018 passed order and directed the bank to release 50% of amount deposited by Saptgiri Gramin Bank in which learned Judge had ordered to appellate authority not to allow the fourth respondent-employee to withdraw the amount deposited by Saptgiri Gramin Bank until further order in W. P. NO.370 of 2018, Hence aggrieved thereby, the Fourth respondent - employee preferred appeal and Hon'ble Court passing order direct the bank to release 50% of amount deposited by Saptgiri Gramin Bank. The above documents/judgments are not the least, during the course of proceedings if required will be submitted additional documents.

12. That with regard to the statements made in paragraphs 12 & 13 of the appeal, under reply, it is stated that the same are matters of record to be verified by the Hon'ble Appellate Authority. However, statement made in para 12 is denied to the extent that while processing the calculation of gratuity the appellant has miserably failed to consider and take into the account of last wages drawn as per the provisions in the Act and the fractured meaning of pay under Regulation.

13. That with regard to the statements made in paragraphs 14 of the appeal, under reply, it is stated that the same are incorrect and false because the higher amount of gratuity was paid to the answering respondent no. 1 no doubt, but at the same time the appellant has failed to calculate appropriately keeping in view that the respondent no. 1 has rendered more than 30 years of service and he is actually eligible for gratuity on the basis of one and half months pay for every completed years of service over and above 30 years i.e. for 45 days as per provisions in the Act.

14. That with regard to the statements made in paragraphs 15 of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the amount paid to him was less and disputed one due to wrong interpretation of pay or salary defined in the Regulations which has been differentiated with that of employees.

15. That with regard to the statements made in paragraphs 16 to 22 of the appeal., under reply, it is stated that the same are matters of record and need no reply.

16. That with regard to the statements made in paragraph 23 of the appeal, under reply, it is stated that the same are nothing, but grounds being taken by the appellant in sub- para graphs (i to xxix) of paragraph 23 while preferring the instant appeal and the same are incorrect, false and misleading and hereby denied as mentioned herein below :-

i) That it is stated that the impugned order passed by the Respondent No. 2 is In accordance with law and on the basis of the facts of the case.

ii) That it is stated that the Controlling Authority has rightly considered the case of the respondent no. 1 and no error has been committed by the passing authority because earlier claim of the respondent no.1 was wrong due to defective and fractured concept of the pay in the Regulations and not in conformity with the provisions in the Act.

iii) That it is stated that the Learned Controlling Authority has rightly considered the provisions of the Payment of Gratuity Act,1972, Regional Rural Banks Act, 1976 and the Jharkhand Gramin Bank (Officers

and Employees) Service Regulations, 2010 in its true letter and spirit and no error has been committed as stated/alleged by the appellant.

iv) That with regard to the statements made in paragraph 23 (iv) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has deliberately discussed and described in the relevant Para of the order impugned and has come to the conclusion for determining the actual gratuity payable to the applicant and no error has been committed as alleged.

v) That with regard to the statements made in paragraph 23 (v) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because it is nullified from mere perusal of the Section 14 of the Act which reads as under :-

" Act to override other enactments, etc - The provisions of this Act or any rule made there under shall, have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

vi) That with regard to the statements made in paragraph 23 (vi) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has not committed any illegality and error in invoking the provisions of both the Act and Service Regulations to arrive at a higher amount of gratuity and has rightly determined the same in accordance with law.

vii) That with regard to the statements made in paragraph 23 (vii) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has rightly considered both the Act as well as Regulations comparatively and has come to the conclusion in accordance with law and has not committed any error or illegality while determining the Gratuity payable to the Respondent No. 1 based on the -reliance of the applicant on various judgments particularly Judgment / Order dated 13.12.2017 of the Appellate Authority Under Payment of Gratuity Act, 1972 & the Deputy Chief Labour Commissioner (Central) , Hyderabad mentioned herein above.

viii) That with regard to the statements made in paragraph 23(viii) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the definition of 'PAY' in the Regulation is ambiguous, fractured, contradictory and discriminating with Officers and employees and after careful consideration of these aspects the Controlling Authority has rightly interpreted and has come to its findings and determined the gratuity applicable to the applicant in accordance with law.

ix) That with regard to the statements made in paragraph 23 (ix) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority found the definition of Pay in the Regulations defective, fractured, contradictory and discriminatory in case of officers and employees as stated hereinabove and as such the last wages drawn concept has been taken into Account, and no were "Pay" is defined separately and specifically in the regulation for the purpose of gratuity. Hence no error has been committed.

(ix) Interim Order dated 19.03.2018 passed by Hon'ble Sri Justice Sanjay Kumar and Hon'ble Sri Justice M. Ganga Rao in the High Court of Hyderabad in Writ APPEAL No. 451 of 2018 passed order and directed the bank to release 50% of amount deposited by Saptgiri Gramin Bank in which learned Judge had ordered to appellate authority not to allow the fourth respondent-employee to withdraw the amount deposited by Saptgiri Gramin Bank until further order in W. P. NO.370 of 2018, Hence aggrieved thereby, the Fourth respondent - employee preferred appeal and Hon'ble Court passing order direct the bank to release 50% of amount deposited by Saptgiri Gramin Bank. The above documents/judgments are not the least, during the course of proceedings if required will be submitted additional documents.

12. That with regard to the statements made in paragraphs 12 & 13 of the appeal, under reply, it is stated that the same are matters of record to be verified by the Hon'ble Appellate Authority. However, statement made in para 12 is denied to the extent that while processing the calculation of gratuity the appellant has miserably failed to consider and take into the account of last wages drawn as per the provisions in the Act and the fractured meaning of pay under Regulation.

13. That with regard to the statements made in paragraphs 14 of the appeal, under reply, it is stated that the same are incorrect and false because the higher amount of gratuity was paid to the answering respondent no. 1 no doubt, but at the same time the appellant has failed to calculate appropriately keeping in view that the respondent no. 1 has rendered more than 30 years of service and he is actually eligible for gratuity on the basis of one and half months pay for every completed years of service over and above 30 years i.e. for 45 days as per provisions in the Act.

14. That with regard to the statements made in paragraphs 15 of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the amount paid to him was less and disputed one due to wrong interpretation of pay or salary defined in the Regulations which has been differentiated with that of employees.

15. That with regard to the statements made in paragraphs 16 to 22 of the appeal., under reply, it is stated that the same are matters of record and need no reply.

16. That with regard to the statements made in paragraph 23 of the appeal, under reply, it is stated that the same are nothing, but grounds being taken by the appellant in sub- para graphs (i to xxix) of para graph 23 while preferring the instant appeal and the same are incorrect, false and misleading and hereby denied as mentioned herein below :-

i) That it is stated that the impugned order passed by the Respondent No. 2 is In accordance with law and on the basis of the facts of the case.

ii) That it is stated that the Controlling Authority has rightly considered the case of the respondent no. 1 and no error has been committed by the passing authority because earlier claim of the respondent no.1 was wrong due to defective and fractured concept of the pay in the Regulations and not in conformity with the provisions in the Act.

iii) That it is stated that the Learned Controlling Authority has rightly considered the provisions of the Payment of Gratuity Act, 1972, Regional Rural Banks Act, 1976 and the Jharkhand Gramin Bank (Officers

x) That with regard to the statements made in paragraph 23 (x) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has not committed any error or illegality as alleged by the appellant in this para and he has rightly calculated as per provisions of the Payment of Gratuity Act, 1972

xi) That with regard to the statements made in paragraphs 23 (xi & xii) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because Payment of Gratuity Act, 1972 shall have an overriding effect thereupon.

xii) That with regard to the statements made in paragraph 23(xiii) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because this fact is revealed from mere reading of para 3 & 4 of Section 72 (3) of the Regulations related to gratuity itself which reads as :-

Para -3 -Provided further that in respect of an officer the gratuity is payable based on the last pay drawn.

Para-4- Provided also that in respect of an employee pay for the purpose of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement or termination or a service as the case may be."

xiii) That with regard to the statements made in paragraph 23(xiv) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has never disregarded the provisions of the Regulations, rather he has simply pointed out its draw back and defect only as compared to last wages drawn concept in the Act for the purpose of Gratuity Calculation purpose only and as such no error has been committed by him in any manner.

xiv) That with regard to the statements made in paragraph 23(xv) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because the Controlling Authority has rightly invoked the actual meaning of wages last drawn as defined in the Act because as stated herein above the definition of pay, salary etc in the Regulations are found to be defective, fractured and discriminatory one,

xv) That with regard to the statements made in paragraph 23(xvi) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because **the Act shall have overriding effect upon the Regulations wherein last wages drawn concept is to be taken into account while determining the gratuity amount payable to the Respondent No. 1.** (highlighted by this Authority)

xvi) That with regard to the statements made in paragraph 23(xvii) of the appeal, under reply, it is stated that the same are incorrect and false and hereby denied because there is no scope of any discrimination between any officer and employee as per provisions of the Payment Gratuity Act, 1972 and the Act shall prevail.

xvii) That with regard to the statements made in paragraph 23(xviii & xix) of the appeal, under reply, it is stated that the same are incorrect, false and it is wrong to say the same to be illegal and baseless and hereby denied because the Controlling Authority has arrived at calculation of gratuity under law and as per provisions of the Act based on various earlier Judgments of the Hon'ble Apex Court as well as DCLR Hyderabad & the Appellate Authority under the Payment of Gratuity Act. 1972 as mentioned herein above.

xviii) That with regard to the statements made in paragraph 23(xx & xxi) of the appeal, under reply, it is stated that the same are incorrect, false and baseless and hereby denied because as per provisions in the Act the gratuity is payable for one and half month's pay for every completed years of service beyond 30 years i.e. for 45 days not 15 days' pay for every completed year of service over and above 30 years wrongly mentioned in the Service Regulations of the appellant Bank.

xix) That with regard to the statements made in paragraph 23(xxii , xxiii & xxiv) of the appeal, under reply, it is stated that the same are incorrect, false and baseless and hereby denied because the Respondent No. 1 has served the bank for 35 years, 7 months and 26 days and as such the period above 6 months have been rounded off to one year and as such total period of service over and above 30 years has come to 6 years and as such calculation has been made accordingly. Hence no error has been committed by the Respondent No. 2

xx) That with regard to the statements made in paragraph 23(xxv) of the appeal, under reply, it is stated that the same are incorrect, false and baseless and hereby denied because interest has been levied as per provisions in the Act due to delay in payment of the differential amount of gratuity payable which is still to be paid as per award passed by the Controlling Authority, now under challenge, in the instant appeal by the appellant.

xxi) That with regard to the statements made in paragraph 23(xxvi & xxvii) of the appeal, under reply, it is stated that the same are incorrect, false and baseless and hereby denied because the Controlling Authority has duly considered all Judgments submitted by the appellant while deciding the matter. However, he did not feel necessary to make reference thereof in the impugned order because Provisions of the Gratuity Act would prevail over the Regulations.

xxii) That with regard to the statements made in paragraph 23(xxviii & xxix) of the appeal, under reply, it is stated that the same are incorrect, false and baseless and hereby denied because the Controlling Authority has rightly passed orders for interest as well as balance amount of gratuity payable to the Respondent No.1 is in accordance with law and provisions of the Gratuity Act.

The Respondent has placed reliance on the following decisions :

(i) P Serlvaraj vrs The Management of Shardlow India [W A 1478 of 206 (sic 2006)]

(ii) M D ,Punjab State Cooperative Bank Ltd vrs Manjit Singh Sodhi, 2011 Lab I C 708

(iii) Saptagiri Gramin Bank vrs P Venugopal Gupta and 23 others (P G Appeal Decision Nos 36/ 21 to 44/2017 dated 13/12/2017 of the Appellate Authority under Payment of Gratuity Act,1972 and Deputy Chief Labour Commissioner (Central), Hyderabad.

(iv) The Chairman,Uttarbanga Kshetriya Gramin Bank vrs Shyamal Kanti Bhattacharjee [Appeal No.48 (19)/2017.E-Dy CLC dated 15th June 2018 of the Appellate Authority and Deputy Chief Labour Commissioner (Central),Kolkata.

(v) India Gramin Bank Pensioners' Organization,Unit Rewa vrs Masdhyanchal Gramin Bank and another (in WP 9182 and 2299 of 2017 and WP 2877 of 2018)

(vi) Shri K Andappa vrs Chairman,Pragati Krishna Gramin Bank (Gratuity Application No.36 (03)/2013-RLC/BLY dated 20th January 2015,Findings of the Controlling Authority and Regional Labour Commissioner (Central), Bellary)

(vii) Y K Singla vrs Punjab National Bank and others (Civil Appeal No.9067 of 2012.Hon'ble Supreme Court)

(viii) Sri Ashok Kumar Chowdhury vrs Chairman,Uttarbanga Gramin Bank (Gratuity Application No.48 (1)/2015/ALC-5 dated 6th October 2016)

(ix) Sri B Reddappa Reddy vrs The General Manager,Saptagiri Gramin Bank (Gratuity Application No.48/102/2016-E2 dated 12th July 2017 of CA and ALC (C),Hyderabad)

(x) Sri P Satyanarayana vrs The Chairman, Saptagiri Grameena Bank (Gratuity Application No.48/85/2016-E2 dated 12th July 2017 of CA and ALC (C),Hyderabad)

(xi) A decision bearing No.AJ-48 (98)/2017-ALC dated 16/03/2018 wherein the Chairman,Rajasthan Marudhar Gramin Bank is the respondent. The decision has been delivered by the CA and ALC (C),Ajmer.

(xii) Copy of judgement in Writ Appeal No.451 of 2018 dated 19/03/2018 of the High Court of Judicature at Hyderabad.

APPRECIATION OF SUBMISSIONS:

The Appellant says as follows:

- 1.That an Officer is eligible to get gratuity on the basis of the Basic Pay only.
- 2.The maximum gratuity will be restricted to 15 months' Pay
- 3.Beyond 30 years of service gratuity will be paid at half the monthly pay.
- 4.On the basis of the same, his gratuity has been paid correctly.

What the Respondent says being that :

- 1.His Basic Pay, DA, PQP ,Special Allowance and DA on special allowance should be taken into account for calculation of gratuity.
- 2.That for 30 years gratuity @ one month on the above emoluments and after 30 years of service gratuity @ 45 days on the basis of the above emoluments should be calculated.
- 3.That for Officers and Employees there cannot be different treatment as regards pay and allowances for calculation of gratuity. This is discriminatory and violates Article 14 of the Constitution of India.

THE ISSUES TO BE ADDRESSED:

ISSUE NO.1 : WHAT IS THE NATURE OF JHARKHAND GRAMIN BANK (OFFICERS AND EMPLOYEES) SERVICE REGULATION, 2010 ? IS IT A "LAW" WITHIN THE MEANING OF ARTICLE 13 (3) (a) OF THE CONSTITUTION OF INDIA ?

ISSUE NO.2 : WHETHER THE CONTROLLING AUTHORITY IN THE INSTANT CASE HAS GIVEN A JUST AND FAIR ORDER ?

ISSUE NO.3 : WHAT ORDERS ARE NECESSARY TO BE PASSED TO MEET THE ENDS OF JUSTICE ?

Now, I proceed to answer the above issue seriatim as follows :

ISSUE NO.1 : IN AFFIRMATIVE

REASONS :

Jharkhand Gramin Bank is a creature of the law viz Regional Rural Banks Act,1976 and Section 30 of the said Act reads as follows:

30. Power to make regulations.- 2*[(1)] The Board of directors of a Regional Rural Bank may, after consultation with the Sponsor Bank and the 3*[National Bank] and with the previous sanction of the Central Government 4*["by notification in the Official Gazette,] make regulations, not inconsistent with the provisions of this Act and the rules made thereunder, to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of this Act. 5*[(2) Every regulation shall, as soon as may be after it is made under this Act by the Board of directors, be forwarded to the Central Government and that Government shall cause a copy of the same to be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the regulation or both Houses agree that the regulation should not be made, the regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that regulation."

THE POWER OF LAW OR RULE MAKING:

After discussing the above, it is felt imperative to discuss the law making power of the Executive viz. whether Government companies or statutory bodies like Jharkhand Gramin Bank , which are agencies, instrumentalities of State or Other Authorities, can make law/rules/regulations for governance of the institutions ? In this context, it is felt necessary to discuss Article 12 and 13 of the Constitution of India which reads as follows:

Article 12 : Definition

In this Part, unless the context otherwise required, "the State" includes the Governmental and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India.

Article 13 : Laws inconsistent with or in derogation of the fundamental rights

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

.....17.....

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise required, –

(a) **“law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;**

(b) **“laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India** (highlight by the Author for emphasis) before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.

For the convenience of the esteemed readers, I have reproduced both the Articles verbatim. Government Companies, Statutory or Autonomous Bodies or Registered Societies, created to discharge Governmental functions are "State" "Agency or Instrumentalities of State" or "Other Authorities" within the meaning of Article 12 of the Constitution of India and are competent to make law (rules or regulations) within the meaning of Article 13 (3) (a) and (b) of the Constitution of India and such law (rules or regulation) would have statutory force.

The Hon'ble Supreme Court of India, in the case of *Chairman-cum-M D,Coal India Ltd vrs Anant Saha*, <https://indiankanoon.org/doc/1415650>, has stated that "CDA Rules are statutory rules".

The above apart, a learned Constitution Bench of the Hon'ble Supreme Court of India , in the case of *Indra Sawhney vrs. Union of India and Others*, AIR 1993 SC 477 has held as follows:

Question 1(a):

Whether the `provision' in Article 16 (4) must necessarily be made by the Parliament/Legislature?

Constitution of India - Article 16 (4), 12 and 13 (3) (a) - 'Provision' in Article 16 (4) - Power of 'State' to make any `provision' - Held (per Kania, C.J. and Venkatachalliah, Ahmadi and Jeevan Reddy, JJ., Pandian, Kuldip Singh and Sawant, JJ. concurring), it need not necessarily be made by the Parliament or any State Legislature - Govt. can introduce reservation by Executive Orders such as the impugned Official Memorandums (OMs) - Having regard to the meaning and interpretation of `State' in Article 12 and of `law' in Article 13 (3) (a) local bodies, statutory corporations and other instrumentalities of the State are themselves competent to make such a provision, if so advised - Abuse of such power controlled by the requirement of the exercise to be an objective one and for only the classes satisfying the criteria - Rule of ultra vires will also apply - Per Sahai, J., such executive orders should have been laid before Parliament - Words and phrases.

The Regulations made by the Bank are laid in the Parliament and it undergoes the legislative process. The Officers' and Employees' services are governed by these Regulations. When an employee does not get gratuity as he desires, how can it be told that it is inconsistent with Payment of Gratuity Act, 1972? If an employee gets an amount less than the statutorily fixed amount as a scheme of the Employer, then, it would be told that the regulations are inconsistent with the P G Act, 1972 and the proviso of the Act would prevail over the rules or laws. Thus, the Service Regulations of the Appellant Bank is a "law" which is enforceable in the Court and it is not inconsistent with Payment of Gratuity Act, 1972 as the regulation has not snatched away of the rights of the employees as far as gratuity is concerned.

ISSUE NO.2 : IN NEGATIVE

REASONS : The Controlling has passed the order mainly relying on the decisions of some Controlling Authorities and Appellate Authorities and the order shows total non-application of mind. It appears to me that somebody has prepared the order and he has just signed it. This is due to the fact that no sensible or sane person would construe one half months pay as one and half months pay. The vocabulary and knowledge of the CA is pathetic. The meaning of one half is as follows:

one half means
one half symbol
one half girl friend

One-half - definition of one-half by The Free Dictionary
www.thefreedictionary.com/one-half

Noun: 1. one-half - one of two equal parts of a divisible whole; "half a loaf"; "half an hour"; "a century and one half"

In the present context, one half means "15" and not 45. The CA should introspect himself as to where he stands. He does not understand the meaning of one half which is unfortunate.

As far as calculation of gratuity is concerned the relevant regulation reads as follows:

REGULATION 72 Gratuity

(1) An Officer or employee shall be eligible for payment of gratuity either as per the provisions of Payment of Gratuity Act 1972 (39 of 1972) or as per sub-regulation (2) whichever is higher.

(2) Every officer or employee shall be eligible to get gratuity on –

- (a) Retirement,
- (b) Death,
- (c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or
- (d) Resignation after completing 10 years of continuous service, or
- (e) termination of service on any other way except by way of punishment after completion of 10 years of service :

Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes Financial loss to the bank and in that case to that extent only.

(3) The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay.

Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that in respect of an officer the gratuity is payable based on the last pay draw :

Provided also that in respect of an employee pay for the purpose of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination or (sic of) service as the case may be.

The above proviso would show that the language used in the regulation is plain and simple and there is no ambiguity as regards calculation of gratuity for an officer .Therefore, there was no need for the CA to interpret pay, emoluments etc for the purpose of calculation of gratuity.The Appellant Bank has been sponsored by Bank of India and it would be in fairness and fitness of this case to know the proviso of both the organisations on payment of gratuity.

<p>GRATUITY RULES OF BANK OF INDIA</p>	<p>SERVICE REGULATIONS PERTAINING TO GRATUITY OF JHARKHAND GRAMIN BANK</p>
<p>Rule 2 (10) 'Salary' means -</p> <p>(i) in the case of a member being an officer, the monthly basic pay and personal pay, personal allowance and Manager's allowance whilst on tour of duty overseas, if any;</p> <p>(ii) in the case of a member not being an officer, the average of the basic pay and special allowance and officiating allowance, if any,</p> <p>Provided, however, that in the case of those members who are entitled to, and who claim, payment of gratuity under the Payment of Gratuity Act, 1972, 'salary' shall be deemed to mean 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.</p> <p>Rule 9 QUANTUM OF GRATUITY</p> <p>Subject to the provisions of the Payment of Gratuity Act, 1972, or any other law relating to payment of gratuity to any class of employees or part thereof and also to the provisions of industrial</p>	<p>REGULATION 72 Gratuity</p> <p>(1) An Officer or employee shall be eligible for payment of gratuity either as per the provisions of Payment of Gratuity Act 1972 (39 of 1972) or as per sub-regulation (2) whichever is higher.</p> <p>(2) Every officer or employee shall be eligible to get gratuity on –</p> <p>(a) Retirement,</p> <p>(b) Death,</p> <p>(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or</p> <p>(d) Resignation after completing 10 years of continuous service, or</p> <p>(e) termination of service on any other way except by way of punishment after completion of 10 years of service :</p> <p>Provided that in respect of an employee there shall be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only.</p> <p>(3) The amount of gratuity payable to an officer</p>

<p>Award or any settlement between the Bank and its employees or any part thereof which provides or may provide for better terms of payment of gratuity.</p>	<p>or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay.</p>
<p>(i) The amount of gratuity which shall become due to an employee at the time referred to in Rule 8 shall be equal to an amount calculated at the rate of one month's salary for each completed year of service subject to a maximum of fifteen months' salary:</p>	<p>Provided that where an officer or employee has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.</p>
<p>Provided, however, where the employee has completed more years of service than thirty, the amount of gratuity so computed shall be increased by an amount equal to one-half month's salary for each completed years of service :</p>	<p>Provided further that in respect of an officer gratuity is payable based on the last pay draw :</p>
<p>Provided further that where the fraction of service beyond completed years of service is six months or more, further gratuity will be paid pro rata for such fractional period.</p>	<p>Provided also that in respect of an employee for the purpose of calculation of the gratuity shall be the average of the basic pay (100%), dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination or (sic of) service as the case may be.</p>

The Sponsor Bank in consultation with the Board of Directors of Jharkhand Gramin Bank, has drafted the service Regulations for the officers and employees of Jharkhand Gramin Bank. The Gratuity Rules of Bank of India and the Regulations of the Appellant Bank governing the payment of gratuity to the officers and employees is by and large except the fact that in case of sponsor bank salary is reckoned for gratuity in respect of Officers whereas in case of the Appellant Bank it is the Basic pay. This is due to the fact that Bank of India is an established National Bank having global presence and financially strong which is not the case in case of the Appellant Bank. An institution should have paying capacity to pay more than 20 lakhs to its officers and the regulations should also be clear as regards the components to be reckoned for calculation of gratuity.

The above apart, there should be equality in professionalism between the officers of the sponsoring bank and the sponsored bank viz. Jharkhand Gramin Bank's jurisdiction/area of operation and volume of business is very limited whereas Bank of India's area of operation and volume of business is wider. Therefore, the service conditions of the officers of both banks cannot be comparable. We have to see proportionate equality and distributive justice which is as follows:

DISTRIBUTIVE JUSTICE : FROM ARISTOTLE'S POLITICS

[Politics By Aristotle, 1995 Edition, OUP, Chapter 12, Page 112]

JUSTICE IS THE POLITICAL GOOD. IT INVOLVES EQUALITY OR DISTRIBUTION OF EQUAL AMOUNT TO THOSE WHO ARE EQUALS. BUT WHO ARE EQUALS AND BY WHAT CRITERION ARE THEY TO BE RECKONED AS EQUALS ? MANY CRITERIA CAN BE APPLIED; BUT THE ONLY PROPER CRITERION, IN A POLITICAL SOCIETY , IS THAT OF CONTRIBUTION TO THE FUNCTION OF THAT SOCIETY. THOSE WHO ARE EQUAL IN THAT RESPECT SHOULD RECEIVE EQUAL AMOUNT; THOSE WHO ARE SUPERIOR OR INFERIOR SHOULD RECEIVE SUPERIOR OR INFERIOR AMOUNTS, IN PROPORTION TO THE DEGREE OF THEIR SUPERIORITY OR INFERIORITY. IF ALL ARE THUS TREATED PROPORTIONATELY TO THE CONTRIBUTION THEY MAKE, ALL ARE REALLY RECEIVING EQUAL TREATMENT; FOR THE PROPORTION BETWEEN CONTRIBUTION AND REWARD IS THE SAME IN EVERY CASE. THE SORT OF EQUALITY WHICH JUSTICE INVOLVES IS THE PROPORTIONATE EQUALITY AND THIS IS THE ESSENCE OF DISTRIBUTIVE JUSTICE.

Applying the above maxim, the Respondent cannot be compared in terms of equality to the officers of Bank of India. The Officers of Bank of India are versed with capital market operations, treasure and forex management, international banking, development banking, market intervention and industrial finance whereas Gramin Bank Officers are not exposed to such areas of banking.

The Respondent may feel otherwise but his Authority is very vocal in his expressions viz there is qualitative difference between BoI officers and the Appellant. This is due to the fact that though the Respondent claims that he has worked for more than 35 years in the Appellant Bank, he understands one half month's salary to salary for 45 days as would be evident from his claim. When a banker does not know the value of one half how can he claim gratuity of more than Rs.24 lakhs !!!

This Authority strongly feels that the CAs and AAs under the P G Act,1972, while dealing with such should be very analytical and have a broader vision than a myopic view as has been done in various decisions submitted by the Respondent. The Authorities, while dealing with such cases, should look to the following factors :

1. Whether the organisation in question can afford such huge amount ?
2. The nature and size of the organization and its profitability.
3. The nature of job performed by the employee and the scale of operation and size of the firm.
4. Whether the job/function of the employees of the gramian bank are exactly the same as in the case of the sponsoring banks ? This is due to the fact that Rural Banks' operation is confined to rural areas whereas the sponsored banks have global presence .In such a situation there is a wide variance in nature of jobs and also level of responsibility .
5. The Authorities are not there to do charity at the cost of tax payers' money and to get 5 minutes bravado from the worker that they are concerned about the workers.
6. What is the provision of law and the proviso of regulations of the gramian banks. If according to the regulation the employees get some more amount of gratuity that is all. Better terms of gratuity does not mean two and half times of the gratuity as provided under the law .There should be reasonability .The P G Act,1972 has not told what should the quantum of gratuity under "better terms". It is the giver who should decide. In my opinion, the ideal amount is 3 to 10% more than the Act. None in this country gets such amount of huge gratuity. To my knowledge only SAIL gives Rs.20 lakhs as gratuity to its employees as per their Gratuity Rules, who are within the wage bracket. Therefore, the Authorities should do some empirical studies. It is not that easy or child's play to become a Quasi-judicial Authority. In Raipur, there was an ALC (C) who was giving very ultra socialistic judgments. When Employers used to tell that the Hon'ble Supreme Court has told like this, in reply, very shamelessly he would say that "we do not go by Supreme Court judgments, we go by the Act". Another Officer (Appellate Authority) in Raipur awarded Rs.36 lakhs as gratuity to a retired General Manager of SECL though according to Coal India Ltd's Gratuity Rules, the maximum gratuity that can be paid to an employee is Rs.10 lakhs (in 2017).

7.The spirit of beneficial legislation does not mean to grant huge amounts which may ruin the industry and to make the industry totally non-beneficial.

8.There can be two rules for officers and employees as per the regulation as the regulation is a "law" within the meaning of article 13 (3) (a) of the Constitution of India.If an organisation makes two regulations on gratuity for officers and staff members where is the inconsistency or incongruity ? Whether any law or our Constitution has barred any law/rule making Authority to have different laws for officers and non-officers ?!!!

9.The Authorities under the Act can declare "what the law is, not what the law ought to be". **What the law ought to be** is the work of legislature. The Authorities should not venture to usurp the power of the legislature.

10.When the language is very clear in a statute of regulation or when the language is plain like that of the service regulations of Jharkhand Gramin Bank, the following methods should be resorted to :

While interpreting a statute, the plain meaning of the word has to be followed, particularly when there is no ambiguity in interpreting the same,reference to some of the precedents on the subject would be in fitness of things.This view was taken by a Division bench of the Punjab and Haryana High Court in the case of *National Insurance Company Ltd vrs. Shinder Kaur*[AIR 1998 P&H 184, para 6 (DB)].The learned Division Bench stated that while defining/interpreting the meaning of motor car, it was held that 'tractor' is not a motor car.In the year 1939,the Privy Council had taken the following view in the case of *Pakala Narayana Swamy vrs Emperor*, ' but in truth when the meaning of word is plain it is not the duty of the courts to busy themselves with supposed intentions'.

INTERPRETATION OF PLAIN LANGUAGE : Maxwell is a celebrated writer on Interpretation of Statutes and his famous work, 'MAXWELL ON INTERPRETATION' has been accepted worldwide and gained acclamation. At page 229 of the book he has stated as follows :

"If the meaning of the statute is plain, the effect must be given to it Irrespective of the consequences. It is only when that the language of the statute is capable of bearing more than one construction then in selecting the true meaning, regard must be given to the consequences resulting from adopting the alternative construction. If the words of the statute are susceptible to only to one meaning and no alternative construction is reasonably open then only such a construction is possible which gives the general meaning of the words. Any consideration that it will result into hardship, inconvenience injustice, has to be rejected and preference is to be given to that construction".

Following the above maxims, in my considered and well thought out views, the Authorities should not train themselves while dealing with simple service regulations like that the Appellant's wherein the language is very simple and unambiguous. The decisions relied upon by the Respondent are not relevant as the fact situation of this case is totally different and, therefore, are not of any help to the Respondent.

On the other hand the decision, relied upon by the Appellant viz. *Beed District Central Co-operative Bank Ltd., vrs. State of Maharashtra and others* [2007 – I – LLJ – 1 = 2006 (111) FLR 710 is quite apt and befitting to the case in hand. A person has to adopt either the proviso of Payment of Gratuity Act, 1972 or the Gratuity Rules/Regulations of the establishment. One cannot be allowed to avail the beneficial proviso of both the schemes.

On perusal of the Memorandum of Appeal, it has been found out that the Appellant-Bank has attached APPLICATION FOR GRATUITY form dated 29/08/2016 which has been filled up and signed by the Respondent. In the application, he has claimed a sum of Rs.10,35,900/- which has been paid to him. This shows that the Respondent very well knew that according to the existing regulation he is / was entitled to Rs.10,35,900/-. The Respondent is a highly qualified person and at present a practising Advocate in the Hon'ble High Court of Jharkhand. It is not that he was not knowing the rules. When he got the possession of the decisions from the Authorities in Rajasthan, Karnataka, Andhra Pradesh and West Bengal, he rushed to the CA thinking that he may get Rs.14 lakhs. It should not be forgotten that "LAW HELPS THE NEEDY, NOT THE GREEDY" It is not understood as to how a Gramin Bank Officer can get such huge amount of gratuity ! The paying capacity of the organisation is most important. This Authority does not feel that a small institution like Jharkhand Gramin Bank can afford such huge amount to its retired officers in absence of any express provision in the regulations !!!

Another angle of the case being that when we do not get case-laws or precedents under any labour law, we resort to the principle of *pari materia*. In Industrial Disputes Act, 1947, we have seen award of back wages along with re-instatement. Though this is legal, the Hon'ble Supreme Court has not appreciated the same looking to the financial burden on the organisation and other related factors. It would be in fairness and fitness of this case to cite some decisions as follows:

APPLICATION OF MIND WHILE AWARDING RELIEF:

The Hon'ble Supreme Court has said that while granting any relief the Labour Courts and Industrial Tribunals should apply their mind. In this context it would be quite pertinent to refer to the following decisions :

(i) *Hindustan Motors Ltd. vrs. Tapan Kumar Bhattacharya and Another* [(2002) 6 SCC 41] : In this case the Hon'ble Apex Court noticed *Raj Kumar* (supra) and *Hindustan Tin Works* (supra) but held:

"As already noted, there was no application of mind to the question of back wages by the Labour Court. There was no pleading or evidence whatsoever on the aspect whether the respondent was employed elsewhere during this long interregnum. Instead of remitting the matter to the Labour Court or the High Court for fresh consideration at this distance of time, we feel that the issue relating to payment of back wages should be settled finally. On consideration of the entire matter in the light of the observations referred to supra in the matter of awarding back wages,

we are of the view that in the context of the facts of this particular case including the vicissitudes of long- drawn litigation, it will serve the ends of justice if the respondent is paid 50% of the back wages till the date of reinstatement..."

The Court, therefore, emphasized that while granting relief application of mind on the part of the industrial court is imperative. Payment of full back wages, therefore, cannot be the natural consequence.

To the same extent are the decisions of the Hon'ble Apex Court in :

(i) *Indian Railway Construction Co. Ltd. v. Ajay Kumar* [(2003) 4 SCC 579] and

(ii) *M.P. State Electricity Board vrs. Jarina Bee (Smt.)* [(2003) 6 SCC 141].

(iii) *U.P. State Textile Corpn. Ltd. vrs. P.C. Chaturvedi and Others* [(2005) 8 SCC 211].

(iv) *S.M. Nilajkar and Others vrs. Telecom District Manager, Karnataka* [(2003) 4 SCC 27] : In this case the then Hon'ble Chief Justice Lahoti has opined:

"The fact remains that there was delay, though not a fatal one, in initiating proceedings calculating the time between the date of termination and initiation of proceedings before the Industrial Tribunal-cum- Labour Court. The employee cannot be blamed for the delay. The learned Single Judge has denied the relief of back wages while directing the appellants to be reinstated. That appears to be a just and reasonable order"

(v) *Rattan Singh vrs. Union of India* [(1997) 11 SCC 396] : In this case the Hon'ble Supreme Court directed payment of a consolidated sum of Rs. 25,000/- in lieu of back wages and reinstatement having regard to the time lag between the date of termination and the date of order.

(vi) *Ruby General Insurance Co. Ltd. vrs. Chopra (P.P.)* [(1969) 3 SCC 653] and

(vii) *Hindustan Steels Ltd. vrs. A.K. Roy* [(1969) 3 SCC 513],

In the above 2 cases the Apex Court held that before granting reinstatement, the court must weight all the facts and exercise discretion whether to grant reinstatement or to award compensation.

The above said decisions were, however, distinguished in *Mohan Lal vrs. Management of M/s. Bharat Electronics Ltd.* [(1981) 3 SCC 225]. Desai, J. was of the opinion:

"17 But there is a catena of decisions which rule that where the termination is illegal especially where there is an ineffective order of retrenchment, there is neither termination nor cessation of service and a declaration follows that the workman concerned continues to be in service with all consequential benefits. No case is made out for departure from this normally accepted approach of the courts in the field of social justice and we do not propose to depart in this case."

(vii) *Allahabad Jal Sansthan vrs. Daya Shankar Rai and Another* [(2005) 5 SCC 124] : In this case, wherein one of the learned Judges of the present case was a party, the Bench had taken into consideration most of the decisions relied upon by Mr. Sangal and observed:

"A law in absolute terms cannot be laid down as to in which cases, and under what circumstances, full back wages can be granted or denied. The Labour Court and/or Industrial Tribunal before which industrial dispute has been raised, would be entitled to grant the relief having regard to the facts and circumstances of each case. For the said purpose, several factors are required to be taken into consideration. It is not in dispute that Respondent 1 herein was appointed on an ad hoc basis; his services were terminated on the ground of a policy decision, as far back as on 24-1-1987. Respondent 1 had filed a written statement wherein he had not raised any plea that he had been sitting idle or had not obtained any other employment in the interregnum. The learned counsel for the appellant, in our opinion, is correct in submitting that a pleading to that effect in the written statement by the workman was necessary. Not only no such pleading was raised, even in his evidence, the workman did not say that he continued to remain unemployed. In the instant case, the respondent herein had been reinstated from 27-2-2001."

It was further stated:

"16. We have referred to certain decisions of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realised that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at."

(viii) *General Manager, Haryana Roadways vrs. Rudhan Singh* [JT 2005 (6) SC 137 : (2005) 5 SCC 591], : In this case , a **3-Judge Bench** of the Apex Court in a case where the workman had worked for a short period which was less than a year and having regard to his educational qualification, etc. denied back wages although the termination of service was held to have been made in violation of Section 25F of the Industrial Disputes Act, 1947 stating:

"A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment, namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. One of the important factors, which has to be taken into consideration, is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at his age and the qualification possessed by him he may not be in a position to get another employment. However, where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. Another important factor, which requires to be taken into consideration is the nature of employment. A regular service of permanent character cannot be compared to short or intermittent daily-wage employment though it may be for 240 days in a calendar year."

(ix) *A.P. State Road Transport Corporation and Others vrs. Abdul Kareem* [(2005) 6 SCC 36] : In this case, while the Labour Court directed reinstatement with continuity of service of the Respondent but without back wages, the Hon'ble Supreme Court denied even the continuity of service.

(x) *M.L. Binjolkar vrs. State of Madhya Pradesh* [JT 2005 (6) SC 461 : (2005) 6 SCC 224] : In this case, referring to a large number of decisions, it has been held:

"7 The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view"

(xi) *Management of Madurantakam Coop. Sugar Mills Ltd. vrs. S. Viswanathan* [(2005) 3 SCC 193], quantum of back wages was confined to 50% stating:

"19 It is an undisputed fact that the workman had since attained the age of superannuation and the question of reinstatement does not arise. Because of the award, the respondent workman will be entitled to his retiral benefits like gratuity, etc. and accepting the statement of the learned Senior Counsel for the appellant Mills that it is undergoing a financial crisis, on the facts of this case we think it appropriate that the full back wages granted by the Labour Court be reduced to 50% of the back wages"

(xii) *State of U.P. and Others vrs. Ram Bachan Tripathi* [(2005) 6 SCC 496]: In this case, the Hon'ble Apex Court denied the service benefits for the period the employee remained absent.

(xiii) *Rajasthan State Road Transport Corporation and Others vrs. Shyam Bihari Lal Gupta* [(2005) 7 SCC 406] : In this case, it was observed:

"3. According to the learned counsel for the appellant Corporation, the decree is absolutely silent so far as the back wages are concerned. The decree in essence contains only a declaratory relief without any consequential payment for monetary benefits. That being so, the executing court and the High Court were not justified in granting the relief sought for. Learned counsel for the respondent on the other hand submitted that when the decree clearly indicated that the termination was illegal non est, as a natural corollary, the plaintiff was entitled to the back wages."

In *Talwara Co-operative Credit and Service Society Ltd vrs Sushil Kumar*, 2007-08 SCLJ 92 : 2008 LLR 1121, while dealing with a case of award of back wages, the Hon'ble Supreme Court stated that while awarding back wages one has to see the condition of the industry viz. whether it can afford to pay back wages to a workman. The relevant portion is reproduced hereunder:

"When the question arises as to how and in what manner balance should be struck, it is necessary for the Industrial Court also to consider as to whether the industry has been sick or not. If it is found out that the industry is not in a position to bear the financial burden, an appropriate award, as a result whereof the equities between the parties can be adjusted should be passed".

Applying the said maxim, this Authority is of the opinion that the condition of Jharkhand Gramin Bank is not so strong that it can afford to pay Rs.24 lakhs as gratuity to its retiring employees/officers.

STATUS OF THE PRESENT CASE:

Applying the maxims, as hereinbefore described, I am not inclined to dismiss the appeal of Jharkhand Gramin Bank which would drain away a huge sum of public money from the Bank. It would become a precedent and the bank will be saddled with huge expenditure towards gratuity in future also. This will expose the Bank to financial doldrum. The judgments of the CAs and AAs, as relied upon by the Respondent, suffer from illegality, irrationality, procedural impropriety and perversity. The concerned Authorities have travelled beyond their jurisdiction instead of confining to the proviso of the Service Regulations of the Rural Banks.

ISSUE NO.3 : AS PER THE ORDERS THAT FOLLOWS

In view of what have been discussed hereinbefore and keeping the Service Regulations of the Appellant bank in view, I proceed to pass the following orders :

ORDERS

1. Jharkhand Gramin Bank has paid gratuity of **Rs.10,35,900/-** to the respondent which is better than what has been provided under the Act.
2. There is no infirmity in the action of the Appellant-Bank.
3. The appeal filed by the Appellant-Bank succeeds and the same is allowed.
4. The Order of Findings of the Controlling Authority and Regional Labour Commissioner (Central), Ranchi is set aside.

Given under my hand seal on this day of 15th November 2018 at Dhanbad.


(AJAYA KUMAR SAMANTARAY)

APPELLATE AUTHORITY UNDER PAYMENT OF GRATUITY ACT, 1972 &
DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL)

REGISTERED

**GOVERNMENT OF INDIA,
MINISTRY OF LABOUR AND EMPLOYMENT,
OFFICE OF THE DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL),
SHRAM BHAWAN, JAGJIVAN NAGAR, DHANBAD: 826003**

No. PGA-24/2018-A.7

Date : 15 November 2018

To

1. The Chairman, Jharkhand Gramin Bank, Head Office : Rajendra Place, 5, Main Road, Ranchi : 834001.
2. Shri Ashok Kumar Prasad, s/o Lochan Prasad Sahu, "Saurabh Kunj", Birsa Vihar, Panchsheel Nagar Road No.2, Pandra, Post : Hehal, Dist : Ranchi : 834005.
3. The Controlling Authority and Regional Labour Commissioner (Central), Dhuruwa, Ranchi