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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 22.01.2019
Date of decision: 06.02.2019

\+ W.P.(C) 3385/2018
M/S BCH ELECTRIC LIMITED ..... Petitioner
Through: Mr.Sandeep Sethi, Sr.Adv with Mr.Gulshan Chawla, Adv.

versus

PRADEEP MEHRA ..... Respondent
Through: Mr.J.P.Cama, Sr.Adv with Mr.Kunal Gosain, Mr.Utsav Jain, Advs.

\+ W.P.(C) 3485/2018
M/S BCH ELECTRIC LIMITED ..... Petitioner
Through Mr.Sandeep Sethi, Sr.Adv with Mr.Gulshan Chawla, Adv.

versus

SUPRIO MUKHARJEE ..... Respondent
Through Mr.Saurabh Prakash, Adv.

\+ W.P.(C) 3498/2018
M/S BCH ELECTRIC LIMITED ..... Petitioner
Through Mr.Sandeep Sethi, Sr.Adv with Mr.Gulshan Chawla, Adv.

versus

SHAILENDRA GUPTA ..... Respondent
Through Mr.Saurabh Prakash, Adv.

\+ W.P.(C) 3508/2018

M/S BCH ELECTRIC LIMITED ..... Petitioner
Through Mr.Sandeep Sethi, Sr.Adv with Mr.Gulshan Chawla, Adv.

versus

DIBYENDU BHATTACHARJEE ..... Respondent
Through Mr.Saurabh Prakash, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present batch of four writ petitions impugns identical but separate orders passed by the statutory authorities under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'PG Act'), upholding the claim of the respondents/employees to receive gratuity beyond the ceiling limit prescribed under Section 4(3) of the said Act. Since the petitions raise common issues with similar prayers, they are being decided by a common judgment. However, for the sake of convenience, only the facts of WP(C) No.3385/2018 are being referred to hereinbelow.

2. Vide the present petition under Articles 226 and 227 of the Constitution of India, the petitioner *inter alia* impugns the order dated

31.07.2017 passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'PG Act'), whereby the petitioner was directed to pay the respondent a sum of Rs.1,73,75,000/- as gratuity alongwith simple interest at the rate of 10% per annum on the said amount for delayed payment. The petitioner also impugns the order dated 23.03.2018 passed by the Appellate Authority, confirming the aforesaid order dated 31.07.2017 of the Controlling Authority.

3. The facts emerging from the record that are necessary for the adjudication of the present petition are as follows. The respondent who was the Chief Executive Officer (hereinafter referred to as "CEO") of the petitioner/corporation w.e.f. 12.06.2000, resigned from the said post on 01.06.2012 after admittedly rendering 12 years of service with the petitioner/Corporation. After the respondent tendered his resignation, the petitioner sent a letter dated 09.08.2012 to him enclosing a cheque of Rs.10,19,452/-, out of which Rs.10,00,000/- was allegedly towards the maximum amount of gratuity payable to him under the prevailing laws and the remaining was the interest calculated thereon. It is the respondent's case that as against the

amount actually paid to him by the petitioner, he was entitled to a total of Rs.1,83,75,000/- as gratuity for the entire period of his service. He, therefore, wrote three letters dated 31.08.2012, 24.09.2012 and 19.10.2012 to the petitioner claiming a sum of Rs.1,83,75,000/- as gratuity, but to no avail.

4. Aggrieved by the amount of gratuity paid to him by the petitioner, the respondent filed a claim application before the Controlling Authority under Section 7 of the PG Act, praying for a direction to the petitioner to pay him a further sum of Rs.1,73,75,000/- towards the balance amount payable to him as gratuity. Upon taking cognizance of the respondent's application, the Controlling Authority proceeded to fix the matter for recording the evidence of the parties. However, on 07.11.2014, the parties categorically submitted before the Controlling Authority that the pleadings and documents already on record were sufficient for the disposal of the application, as only a question of law needed to be decided therein. In the light of the joint request made by the parties to expedite the proceedings by foregoing the stage of recording

evidence, the Controlling Authority directed the parties to file their respective affidavits of admission/denial.

5. Pursuant to the order dated 07.11.2014 passed by the Controlling Authority, the respondent filed his affidavit of admission/denial on 05.12.2014 and the petitioner filed its reply thereto on 09.01.2015, on which date the matter was fixed for arguments. Consequently, on 31.07.2017, the Controlling Authority, passed the impugned order allowing the respondent's claim for gratuity and directed the petitioner to pay him Rs.1,73,75,000/- over and above the gratuity amount already paid to him, alongwith simple interest at the rate of 10% per annum for delayed payment.

6. Aggrieved by the aforesaid order passed by the Controlling Authority, the petitioner preferred an appeal before the Appellate Authority which was also dismissed vide order dated 23.03.2018. It is in these circumstances that the petitioner has filed the present writ petition impugning the concurrent findings of the Controlling Authority and Appellate Authority.

7. In the backdrop of these facts, I may now refer to the submissions of the learned counsel for the parties. Mr. Sandeep Sethi,

learned Senior Counsel for the petitioner while impugning the orders upholding the respondent's claim to receive gratuity in excess of the ceiling limit prescribed under the PG Act, submits that the Authorities have failed to appreciate that when the respondent resigned from the petitioner/Corporation on 01.06.2012, Section 4 of the said Act as it stood then, categorically provided that the maximum gratuity payable to an employee under the Act was Rs.10,00,000/-, unless the concerned employee was entitled to receive better terms of gratuity under any *award* or *agreement* or *contract* with his employer. He, thus, contends that if the respondent sought to claim any gratuity in excess of the prescribed ceiling limit, the onus was on him to show that there was an *award* or *agreement*/*contract* with the petitioner/Corporation entitling him to better terms of gratuity, which he failed to do. By drawing my attention to the application filed by the respondent before the Controlling Authority, he submits that the respondent's claim for higher gratuity was only based on an "understanding" or "practice" allegedly prevailing in the petitioner/Corporation, which ultimately has no bearing on the question of the quantum of gratuity an employee is entitled to. Mr.

Sethi's contention, thus, is that the respondent's claim for gratuity in excess of the ceiling limit, is not based on an award or agreement/contract with the petitioner as required under Section 4(5) of the PG Act, and on this ground alone, the same is liable to be rejected.

8. Without prejudice to his aforesaid contention, Mr. Sethi submits that there is nothing in any agreement or contract between the respondent and the petitioner, that entitles the former to better terms of gratuity than those prescribed under the PG Act. On the other hand, by placing reliance on the respondent's terms of appointment, he contends that the gratuity clause therein clearly shows that the respondent would be entitled to gratuity "as per laws", which phrase inevitably contemplates the laws prevailing at the time when the respondent tendered his resignation. Therefore, he submits, the respondent's terms of appointment as the CEO of the petitioner/Corporation, only envisage the payment of gratuity as per the provisions of the PG Act as they stood on 01.06.2012, thereby entitling him to a maximum of Rs.10,00,000/- as gratuity in accordance with the ceiling limit under Section 4(3) at the time.

9. Taking his aforementioned plea further, Mr. Sethi submits that the petitioner/Corporation has an approved gratuity fund, namely Bhartia Cutler Hammer Limited Employees Gratuity Fund, which was constituted under a Trust Deed dated 19.03.1979. As per clause 15 of this Trust Deed, the petitioner's employees are entitled to be paid gratuity out of the aforesaid Fund on the termination of their service, on death or retirement or otherwise as provided in the "Rules of the scheme". The Rules of the scheme and the Appendix thereto provide for two modes of computing an employee's gratuity. For employees covered under the PG Act, gratuity is to be calculated in accordance with the provisions of the Act itself, whereas for the other employees it is to be calculated as per the relevant clauses in the Appendix. He, however, submits that the rules for computing the gratuity of other employees are now redundant in the light of the Payment of Gratuity (Amendment) Act, 1994, which extended the applicability of the PG Act to all the employees engaged in a company. Resultantly, all the petitioner's employees, including the respondent are now covered under the PG Act and, as per the express provisions of the petitioner's gratuity scheme, their gratuity has to be calculated as per the

statutorily prescribed rate and ceiling limit under Sections 4(2) and 4(3) respectively.

10. Mr. Sethi further submits that since the PG Act imposes a maximum limit of Rs.10,00,000/- on the amount of gratuity that can be claimed by an employee, the Controlling Authority while exercising its powers under Sections 7(4)(a) and 7(4)(b), can only decide disputes in which the amount claimed is less than or equal to the said ceiling amount, as it is only claims that are in consonance with the provisions of the Act that can be adjudicated by the Controlling Authority. In support of his aforesaid contention, he relies on the decision of the Supreme Court in ***Allahabad Bank v. All India Allahabad Bank Retired Employees Assn. [(2010) 2 SCC 44]*** and states that the respondent's claim for gratuity being in excess of the maximum ceiling limit provided under Section 4(3) of the PG Act, the Controlling Authority could not have passed the order dated 31.07.2017 in respect thereof for want of jurisdiction.

11. Finally, Mr. Sethi submits that merely because the petitioner had erroneously paid some of its employees gratuity in excess of the maximum ceiling amount, it cannot be said that the petitioner was in

the *practice* of doing so. Even otherwise, it is a settled legal principle that there is no estoppel against the law and, therefore, the respondent cannot claim that the petitioner is estopped from applying the provisions of the PG Act to him, simply because it had failed to apply the same to a few other employees.

12. On the other hand, Mr. J.P. Cama, learned Senior Counsel for the respondent while opposing the petition, submits that the respondent's claim for gratuity in excess of the ceiling limit prescribed under Section 4(3), is not in conflict with the provisions of the PG Act. In fact, contrary to what has been contended by the petitioner, Section 4(5) categorically protects the respondent's right to receive gratuity under better terms than those prescribed under the said Act. By placing reliance on the decision of the Supreme Court in ***Workmen of Metro Theatre, Bombay v. Metro Theatre Ltd., Bombay [(1981) 3 SCC 596]***, he contends that the Act does not contemplate the standardization of the gratuity scheme prescribed thereunder. The statutory scheme only secures the *minimum* entitlements for employees and the Act contains express provisions under which better terms of gratuity, if already existing are not merely preserved, but

could be conferred on employees in the future. Thus, the respondent being an employee who is entitled to better terms of gratuity under an agreement/contract with the petitioner/Corporation in terms of Section 4(5), he is not subject to the ceiling limit prescribed under Section 4(3).

13. Taking his aforesaid plea further, Mr. Cama submits that when the respondent was in the service of the petitioner/Corporation, his emoluments were decided by the Chairman & Managing Director (hereinafter referred to as "CMD") by issuing Executive Emolument Sheets (hereinafter referred to as "EES") that indicated the respondent's emoluments for the current year as also the enhancements therein for the next few years. These EES always contained an entry towards gratuity, which amount was computed at the rate of 4.81% of the respondent's annual basic salary and were issued under the signature of the CMD before being handed over to the respondent in original, thereby becoming a part of the contract between the petitioner/Corporation and the respondent/employee.

14. By drawing my attention to the respondent's EES for the year 2007-2008, Mr. Cama submits that the gratuity amount shown for that

year alone was Rs.6,34,920/-, i.e., nearly twice as much as the then ceiling limit of Rs.3,50,000 under Section 4(3). Similarly, the gratuity amount of Rs.11,54,400/- shown in the respondent's EES for the year 2011-2012, was yet again higher than the ceiling limit of Rs.10,00,000/- in force at the time. Therefore, as per the petitioner's understanding itself of the terms of the contract between the parties and the Trust Deed of its Gratuity Fund, the respondent was always entitled to better terms of gratuity than those prescribed by the PG Act.

15. Mr. Cama's contention, thus, is that the contractual terms of gratuity between the parties were governed by the EES issued to the respondent by the petitioner under the signatures of its CMD. Accordingly, the respondent was entitled to gratuity at the rate of 4.81% of his annual basic salary, as per the terms of his EES. Although the aforesaid rate is in accordance with that prescribed under Section 4(2) of the PG Act, the respondent's gratuity was neither expressly nor impliedly subjected to the ceiling limit under Section 4(3), even as per the petitioner's own understanding. Therefore, the respondent being entitled to better terms of gratuity in

terms of Section 4(5), the Controlling Authority as also the Appellate Authority rightfully upheld his claim for gratuity in excess of the ceiling limit prescribed under Section 4(3).

16. With respect to the issue raised by the petitioner qua the power of the Controlling Authority to pass the impugned order dated 31.07.2017, Mr. Cama submits that the petitioner has never before argued that the Controlling Authority's jurisdiction is only limited to determining claims equal to or less than the ceiling limit stipulated under Section 4(3). Therefore, the aforesaid jurisdictional issue having never been urged by the petitioner before the Controlling Authority or the Appellate Authority, the same ought not be considered by this Court for the first time under its writ jurisdiction. Even otherwise, by placing reliance on the decision of the Supreme Court in ***State of Punjab v. Labour Court, Jullunder and Ors. [(1980) 1 SCC 4]*** as also of this Court in ***P.S. Gupta v. Union of India and Ors. [WP(C) No.7146/2010]***, he submits that the petitioner's aforesaid submission is wholly misconceived as it is a settled legal position that nothing in Section 4(3) has the effect of limiting the Controlling Authority's jurisdiction to decide a dispute

under Section 7(4) of the PG Act. Thus, merely because Section 4(3) imposes a limit on the amount of gratuity payable to an employee, does not mean that the Controlling Authority cannot decide disputes or the admissibility of pecuniary claims in excess of such limit.

17. I have heard the learned counsel for the parties at length and perused the record. In the light of the rival contentions raised by the learned counsel for the parties, I find that the following issues arise for the consideration of this Court:

I. In the facts of the present case, can the respondent claim gratuity in excess of the ceiling limit prescribed under Section 4(3) of the Payment of Gratuity Act, 1972?

II. While exercising its powers under Section 7(4)(a) and 7(4)(b) of the Payment of Gratuity Act, 1972, does the Controlling Authority have the jurisdiction to decide claims in excess of the ceiling limit prescribed under Section 4(3)?

18. Since the outcome of the present petition depends essentially on an interpretation of the Payment of Gratuity Act, 1972, it may be appropriate to refer to the relevant provisions of the said Act as they

stood on the date when the respondent/workman resigned from the petitioner/Corporation. For the sake of ready reference, Sections 4(3), 4(5), 7(4)(a) and 7(4)(b) of the Act are reproduced hereinbelow:

> ***4. Payment of Gratuity.-***
>
> *(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.*
>
> * * *
>
> *(5) 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.*
>
> ***7. Determination of the amount of gratuity.-***
>
> *(4)(a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.*
>
> *(4)(b) Where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.*

19. It may also be useful to refer to the relevant extracts of the Trust Deed dated 19.03.1979 of the Petitioner's Gratuity Fund as also the Rules thereunder, which read as under:

*"**15. PAYMENT OF GRATUITY***

*(a) On behalf of the Company, the Trustee shall provide for the payment of gratuity on termination of service, on death or retirement of the Member or otherwise as provided in the **Rule of the scheme**."*

x x x

RULES

"6. A member on ceasing to be a member of the fund shall be entitled to be paid by the Trustee, the amount due as computed in the manner laid down hereunder in this scheme:-

(a) The amount of Gratuity payable to the beneficiary shall be calculated in the manner provided in the Company's Gratuity Scheme.

*(b) Notwithstanding the provision herein contained, if any member is covered by the provisions of the Payment of Gratuity Act, 1972, the amount of gratuity shall be calculated in accordance with **the provisions of that Act**.*

x x x

APPENDIX

*Gratuity will be payable to the Employees to whom the Payment of Gratuity Act 1972 applies **as per the rates** prescribed by the said Act..."*

20. It may also be relevant to refer to the gratuity clause, i.e., Clause 11 of the respondent's terms of appointment, which is extracted hereinbelow:-

*"**11. Gratuity***
You will be entitled to gratuity on your becoming eligible as per laws."

21. A perusal of Section 4(5) of the Act makes it evident that it begins with a non-obstante clause that gives the said provision an

overriding effect over the remaining provisions of Section 4. Consequently, while Section 4(3) generally prescribes a limit on the maximum amount of gratuity that can be claimed by an employee under the PG Act, Section 4(5) carves out an exception for those employees who have better terms of gratuity under an award, or an agreement or contract with their employer. In other words, an employee who has better terms of gratuity specifically under an award, or an agreement/contract with his/her employer, is not subject to the ceiling limit under Section 4(3) and can claim gratuity in excess thereof. To hold anything to the contrary, would be de hors the spirit of the PG Act and would render Section 4(5) completely nugatory so as to hamper an employee's right to enter into contracts/agreement with better terms of gratuity than those prescribed under the PG Act.

22. Reference may be made to the decision of the Supreme Court in ***Workmen of Metro Theatre (supra)***, the relevant extracts of which read as under:

> *8. [T]he very fact that under the above provision better terms of gratuity could be obtained by an employee by an agreement or contract with the employer notwithstanding the scheme of gratuity obtaining under the Act clearly suggests that no standardisation of the gratuity scheme contemplated by the Act was intended by the Legislature. This also becomes amply clear from the provisions of Section 5 which confer*

> *power upon the appropriate Government to exempt any establishment to which the Act applies from the operation of the provisions of the Act if in its opinion the employees in such establishment, are in receipt of gratuity benefits not less favourable than the benefits conferred under the Act… It is true, as has been observed, by this Court in State of Punjab v. Labour Court, Jullundur [(1980) 1 SCC 4 : 1980 SCC (L&S) 123 : (1980) 1 SCR 953] that the Act enacts a complete Code containing detailed provisions covering all essential features of the scheme for payment of gratuity. But it is also clear that the scheme envisaged by the enactment secures the minimum for the employees in that behalf and express provisions are found in the Act under which better terms of gratuity if already existing are not merely preserved but better terms could be conferred on the employee in future…"*

23. Thus, there can be no doubt that nothing in Section 4(3) affects the right of the respondent to claim gratuity in excess of ceiling limit prescribed thereunder. A conjoint reading of Sections 4(3) and 4(5) further clarifies that the question as to whether the respondent can claim gratuity in excess of the said ceiling limit, hinges on the existence of an award, or contract/agreement with the petitioner/Corporation whereunder he is entitled to better terms of gratuity than those statutorily prescribed under the PG Act. In this regard, learned counsel for the petitioner has sought to rely not only upon the respondent's terms of appointment but also on the Trust Deed of the petitioner's Gratuity Fund and the Rules thereunder, to contend that the respondent is only entitled to gratuity as per the

statutory scheme, as per which the maximum amount payable to the respondent is Rs.10,00,000/-. On the other hand, learned counsel for the respondent has sought to contend that the respondent is entitled to better terms of gratuity under his EES, which are part of his contract with the petitioner/Corporation.

24. In my considered opinion, there is nothing in the Trust Deed dated 19.03.1979 or the Rules thereunder that curbs the respondent's entitlement to gratuity to the ceiling limit prescribed under Section 4(3). The relevant Rule 6(b) of petitioner's gratuity scheme only stipulates that the amount of gratuity payable to an employee shall be calculated in accordance with the provisions of the PG Act. The "provisions of the PG Act" is a broad phrase that not only contemplates the rate statutorily prescribed under Section 4(2) and the ceiling limit under Section 4(3), but also the exception carved out under Section 4(5) for employees who have better terms of gratuity under an award, or agreement/contract with the petitioner. Therefore, in the absence of a specific clause that caps the maximum amount of gratuity payable to the respondent, a broad stipulation in Rule 6(b) that gratuity will be calculated as per the provisions of the PG Act,

cannot be construed to mean that the ceiling limit under Section 4(3) is applicable to the respondent. To my mind, such an interpretation would amount to selectively applying only Section 4(3) of the Act, by ignoring the mandate of Section 4(5), when Rule 6(b) in itself contemplates the provisions of the PG Act as a whole.

25. In other words, Rule 6(b) merely reiterates what is apparent on a plain reading of Section 4 of the PG Act, i.e., the respondent is entitled to a maximum of Rs.10,00,000/- as gratuity, unless there is an award, or contract/agreement whereunder he can claim gratuity in excess of the aforesaid ceiling limit. The said Rule is so broadly drafted that read by itself, it cannot be construed to contemplate only the ceiling limit under Section 4(3) of the PG Act, but also includes the provisions of Section 4(5). Similarly, the Appendix to the aforesaid Rules only stipulates that the respondent's gratuity shall be calculated as per the *rates* prescribed under the PG Act, i.e., under Section 4(2). However, it does not in any way stipulate that he is subject to the statutory limit prescribed under Section 4(3).

26. Now coming to clause 11 of the respondent's terms of appointment which, as per the contentions of the learned counsel for

the petitioner, clearly lays down that the respondent is only entitled to a maximum gratuity of Rs.10,00,000/- as prescribed under the PG Act. I am of the view that there can be two possible interpretations of Clause 11. In the first sense, the phrase "as per laws" can be read to qualify the word "eligible" so that Clause 11 suggests that the respondent shall be entitled to receive gratuity on his meeting the eligibility criteria laid down by the laws in force. For obvious reasons, this particular interpretation of the clause cannot in any way be read to impose a limit on the amount of gratuity payable to the respondent. In the second sense, which is the interpretation that has been relied upon by the learned counsel for the petitioner, Clause 11 can be read to suggest that the respondent shall be entitled to gratuity "as per laws" on his becoming eligible. In this sense also, the phrase "as per laws" is at best a broad stipulation that takes within its sweep not only the provisions of Sections 4(2) and 4(3), but also of Section 4(5). Like Rule 6(b) under the Trust Deed dated 19.03.1979, the interpretation of clause 11 relied upon by Mr. Sethi has such a broad implication that it cannot be read so selectively to apply the ceiling limit under Section 4(3) to the amount of gratuity that can be claimed by the respondent.

Thus, looked at from every possible angle, there is nothing in the documents relied upon by the learned counsel for the petitioner that curbs the gratuity payable to the respondent to the statutory ceiling limit under Section 4(3).

27. When I examine the respondent's EES in the light of my aforesaid conclusions, I find merit in Mr. Cama's contention that even as per the petitioner's own understanding of the Trust Deed dated 19.03.1979, the Rules thereunder and the respondent's terms of appointment, the payment of gratuity to the respondent was never subject to the statutory ceiling limit. In fact, the respondent's EES clearly show that while his gratuity was computed as per the *rate* prescribed under Section 4(2) of the PG Act, the ceiling limit under Section 4(3) was never applied to him during his tenure with the petitioner/Corporation, as the same was never applicable to him in the first place.

28. Moreover, the record clearly shows that the plea that the respondent is only entitled to gratuity in accordance with the ceiling limit, has been taken by the petitioner only after the respondent tendered his resignation. I cannot also lose sight of the fact that

having consistently computed the respondent's gratuity without applying the statutory ceiling limit, the petitioner cannot now be allowed to take technical pleas to deprive the respondent of his hard earned gratuity, which is not a bounty but a terminal benefit that accrues to an employee in lieu of his long and continuous years of service. In these circumstances, I have no hesitation in holding that the respondent was entitled to gratuity as per the rates mentioned in his EES, i.e, at the rate of 4.81% of his annual basic pay, which entitlement is not only in consonance with his terms of appointment, the Trust Deed dated 19.03.1979 and the Rules thereunder, but also the provisions of the PG Act.

29. In view of my aforesaid conclusion that a claim for gratuity in excess of the ceiling limit prescribed under Section 4(3) is not at all beyond the scope of the PG Act, the contention of the learned counsel for the petitioner that the Controlling Authority did not have the jurisdiction to pass the impugned order dated 31.07.2015, has to be necessarily rejected. The PG Act is a complete code in itself with respect to matters relating to the payment of gratuity and the Controlling Authority appointed under Section 3 is statutorily

enjoined under Section 7(4)(b) to adjudicate any dispute qua the amount of gratuity payable or as to the admissibility of any claim to gratuity. When the PG Act itself protects the right an employee to get higher gratuity vis-à-vis the prescribed ceiling limit and does not curb the maximum amount of gratuity payable to an employee, it is unfathomable how the jurisdiction of the Controlling Authority can be curtailed to decide only those claims that have a pecuniary value less the said ceiling limit. Merely because Section 4(3) places a ceiling on the amount of gratuity payable to an employee in the absence of better terms of gratuity in accordance with Section 4(5), it cannot be said that the jurisdiction of the Controlling Authority to examine a dispute under Sections 7(4)(b) is curtailed to the same pecuniary limit. In this regard, reliance may be placed upon the decision of the Supreme Court in ***State of Punjab v. Labour Court (supra)*** as also of this Court in ***P.S. Gupta (supra)***. Therefore, I find absolutely no merit in the contention of the learned counsel for the petitioner that the order dated 31.07.2017 passed by the Controlling Authority is dehors the PG Act.

30. Before concluding, I may also deal with the decisions relied upon by the learned counsel for the petitioner. The decision of the Supreme Court in ***Allahabad Bank (supra)***, is not at all applicable to the facts of the present case. In that case, the plea raised by the appellant/employer was that its internal scheme for *pensionary* benefits was better than the scheme for retiral benefits prescribed under the PG Act and, therefore, by virtue of Section 4(5) it was not enjoined to pay gratuity to its employees under the PG Act. In other words, the appellant/employer essentially sought to invoke Section 4(5) to claim exemption from the payment of gratuity under the provisions of the PG Act. It is in these circumstances that the Court while upholding the right of an employee to receive gratuity under the PG Act, had held that under Section 4(5), the Controlling Authority does not have the power to decide whether an employer is exempt from paying gratuity under the said Act, merely because it finds that the employer's internal scheme for *pensionary* benefits is better than the statutory scheme for gratuity. The Court further held that such a power has been categorically granted only to the appropriate

Government, which alone is competent to grant exemption to an establishment from the applicability of the PG Act.

31. Similarly, the decision in ***Beed District Central Coop. Bank Ltd. v. State of Maharashtra and Ors. [(2006) 8 SCC 514]***, is also not applicable to the present case. In that case, the appellant/employer's internal gratuity scheme provided a better rate for computing the gratuity of the respondent/workman, but the ceiling limit thereunder was lower than that prescribed by the PG Act. When the respondent/workman sought to avail the benefit of the appellant/employer's internal gratuity scheme as also the ceiling limit under the PG Act, the Supreme Court held that the respondent/workman must either avail the benefit of his contract with the appellant/employee in its entirety or the statute. He cannot avail the better terms of his contract with appellant/employer and at the same time keep his options open in respect of a part of the statute that suits him.

32. Thus, the petitioner has not been able to make out a case for quashing the impugned order dated 31.07.2015 passed by Controlling Authority or the order dated 23.03.2018 passed by the Appellate

Authority, upholding the decision of the Controlling Authority. There is absolutely no reason for this Court to interfere with the impugn orders in exercise of its writ jurisdiction under Articles 226 and 227 of the Constitution of India.

33. As per the record, the petitioner has already deposited the amount payable to each of the respondents under the impugned orders alongwith interest, with the Registrar General of this Court. The Registry is directed to forthwith release the deposited amounts alongwith the accrued interest to the respondents. It will be open for the respondents to take steps in accordance with law for the recovering the differential amount, if any, in respect of the interest due on the gratuity payable to him under the impugned order.

34. The writ petitions are accordingly dismissed with no order as to costs.

(REKHA PALLI)
JUDGE

FEBRUARY 06, 2019