

(2007) 01 MAD CK 0008

Madras High Court

Case No: W.A. No. 1478 of 2006

P. Selvaraj

APPELLANT

Vs

The Management of
Shardlow India Limited,
The Joint
Commissioner of
Labour and The
Assistant
Commissioner of
Labour

RESPONDENT

Date of Decision: Jan. 12, 2007

Acts Referred:

- Constitution of India, 1950 - Article 226
- Employees State Insurance Act, 1948 - Section 2(14)
- Industrial Disputes Act, 1947 - Section 12(3)
- Payment of Gratuity Act, 1972 - Section 14, 17B, 2, 4, 4(1)

Citation: (2007) 1 LLJ 1048

Hon'ble Judges: A.P. Shah, C.J; K. Chandru, J

Bench: Division Bench

Advocate: Balan Haridoss, for the Appellant; A.L. Somayaji, SC and T.S. Gopalan and Co. for Respondent 1 and Raja Kalifullah, GP Assisted by V.R. Thangavelu, GA for Respondents 2 and 3, for the Respondent

Final Decision: Allowed

Judgement

K. Chandru, J.

This writ appeal is directed against the order of the learned single Judge dated 10.10.2006 passed in W.P. No. 79 of 2001 confirming the orders of the second respondent appellate authority and the third respondent Controlling Authority in not granting the difference of amount payable to the petitioner towards the gratuity in terms of

the Payment of Gratuity Act, 1972 [for short, "Gratuity Act"].

2. The appellant joined the services of the first respondent on 15.11.1996 and after putting in 32 years of service, he reached the age of superannuation on 09.7.1998. On account of his superannuation, in terms of the Gratuity Act, the first respondent employer paid him a sum of Rs. 70,802/- towards gratuity.

3. At the time of superannuation, viz., in July 1998, the appellant's basic wage was Rs. 131.04 and the Dearness Allowance was Rs. 3951/-. The petitioner had worked for a period of nine days during July 1998 but, however, in computing the last drawn wages, the first respondent employer took into account the wage drawn by the appellant for the month of June 1998 and not July 1998. Under the terms of the settlement under the Industrial Disputes Act, 1947 [for short, "I.D. Act"] between the Union to which the appellant belongs and the first respondent, DA for the workman was to be arrived in terms of the settlement dated 20.02.1995 and it was signed u/s 12(3) of the I.D. Act before the Joint Commissioner of Labour (Conciliation) at Chennai and the DA fixed is found in paragraph 2 of the settlement, which reads as follows:

02. DEARNESS ALLOWANCE: Effective 1.2.95 all permanent workmen covered by this settlement will be paid dearness allowance, based on attendance, at 38.5. (Thirty Eight and half) Paise per point over and above 100 points of Madras Cost of Living Index (1936 base). Further, effective 1.2.1996 the said rate of dearness allowance will be increased to 39 (Thirty Nine) paise per point over and above 100 points of Madras Cost of Living Index (1936 base).

4. The said settlement came into force with effect from 01.02.1995 and was to apply to all permanent workmen, who are under the rolls of the company on the date of settlement and who were already paid DA at the rate of 38.5 per point over and above 100 points of Madras Cost of Living Index (1936 base). Though it is admitted that the said settlement applies to the case of the appellant, the first respondent did not calculate the gratuity by working out the DA as on 09.7.1998 on the basis of 39 paise per point over and above 100 points of Madras Cost of Living Index with base of the year 1936. It was the stand of the first respondent that the Cost of Living Index figures were not available for the month of July 1998 and the petitioner admittedly worked only for a period of nine days and it took some time for the revision of DA to be made in terms of the settlement and in view of the fact that the gratuity will have to be settled on account of superannuation, the figures for the month of June 1998 was taken into account and since the gratuity as per the Act has been paid, there was no dispute between the appellant and the first respondent.

5. Aggrieved by the stand of the first respondent, the appellant filed a petition before the third respondent Controlling Authority under the Gratuity Act in P.G. Case No. 15 of 1999 and claimed gratuity of a sum of Rs. 75,360.73 and after giving credit to the amount already paid, viz., Rs. 70,802/- the balance of Rs. 4558.73 was claimed by him. He also claimed statutory interest at the rate of 15% per annum for the differential amount. The

first respondent resisted the claim on the ground that the gratuity amount was paid to the appellant on 10.7.1998 and that the appellant has given a valid receipt of full and final settlement of his account. Further, as per the settlement u/s 12(3) of the I.D. Act, the DA for the month of June 1998 was Rs. 3720.21 and he was paid the said amount and since that was the last drawn wages in respect of the appellant, gratuity was calculated and it has been paid to him.

6. The third respondent Controlling Authority, after hearing the parties, without going into the merits of the claim, dismissed the application on the ground that the petitioner has passed on a full and final settlement receipt and, therefore, he is estopped from claiming any differential amount allegedly payable by the first respondent. The appellant, thereafter, filed an appeal before the second respondent appellate authority u/s 7(7) of the Gratuity Act being P.G.A. No. 3 of 2000. The second respondent appellate authority, after considering the case of both parties, confirmed the order of the Controlling Authority on the ground of the receipt passed on by him at the time of payment of gratuity by the employer. Further, he also stated that the rate of gratuity has to be calculated on the basis of wages last drawn by him and not what was payable to him.

7. Aggrieved by the said order, the appellant preferred writ petition being W.P. No. 79 of 2001. Even before the learned single Judge, the learned Counsel for the first respondent contended that the Act provides for gratuity on the basis of last drawn wages and not on the basis of what was the wages payable. The learned single Judge, who heard the matter, accepted the argument of the learned Counsel for the first respondent employer on the first point relating to interpretation of the term "last drawn wages". The learned Judge came to the conclusion that since the appellant came to be superannuated on 09.7.1998, gratuity cannot be calculated on the basis of what might have been drawn for the month of July 1998. According to the learned Judge, the provisions of Section 4(2) of the Act cannot be stretched to the extent of adding to the meaning of the provisions and the learned Judge also held that if the claim of the appellant is accepted, there would be a spate of applications from other retired employees, who were paid gratuity on par with the appellant.

8. With reference to the second point framed by the learned Judge as to the length of service, the learned Judge also agreed with the submission of the first respondent employer and held that the total service of the petitioner was 30 years 7 months and 24 days, which was rounded off to 31 years. In the present appeal, we are not concerned with the said finding as no argument was advanced on that issue.

9. With reference to the estoppel, the learned Judge upheld the contention of the respondents 2 and 3 stating that there cannot be estoppel against statutory claim and any receipt or voucher will not be a bar for claiming any further amount. But on factual aspect, the learned Judge held that since the employee, after giving Form I, has given a receipt without raising any objection and after passing full and final settlement, he cannot agitate the same issue all over again. It is against this order, the appellant, having lost before all

the three forums, has come before us with the present writ appeal.

10. Though normally, in an Appeal under Clause 15 of the Letters Patent, this Court does not interfere with the finding of fact recorded by the authorities below but a significant question has been raised in the present appeal as to the true meaning to be given to the term "last drawn wages" found in Section 4(2) of the Gratuity Act. Hence, notice was ordered to the respondents and on their appearance and with the consent of all the parties, main Writ Appeal itself was taken up for hearing.

11. We have heard the arguments of Mr. Balan Haridoss, learned Counsel appearing for the appellant and Mr. A.L.Somayaji, learned Senior Counsel leading M/s T.S.Gopalan and Co. And Mr. Raja Kalifullah, learned Government Pleader, assisted by Mr. V.R.Thangavelu, learned Government Advocate, appearing for respondents 2 and 3 and have perused the records.

12. In the present appeal, the facts are not in dispute. The appellant was admittedly got superannuated on 09.7.1998 thereby working for nine days in the month of July 1998 and that he was also governed by settlement u/s 12(3) of the I.D. Act fixing wages and other service conditions. As per the settlement, the rate of DA has to be revised every month on account of variation in the Cost of Living Index (Madras Series) with the base of the year 1936 at the rate of 39 Paise over and above 100 points.

13. Before the advent of the Payment of Gratuity Act, 1972, workmen were paid some adhoc amount at the time of their superannuation depending upon the terms and service conditions under which they were working. There were some well meaning employers, who have provided some scheme of gratuity and in some other cases, gratuity was ordered to be paid by Awards given by adjudicating authorities under the Industrial Disputes Act, 1947 [for short, "I.D. Act"]. However, the Parliament felt that in order to give a terminal benefit to a workman on an uniform basis, the Act was introduced in the year 1972. Subsequently, the Act was notified to come into force on 16.9.1972. The said Act came to be challenged by the employers on several grounds including its constitutional validity which was upheld by the Supreme Court vide its decision reported in 1982 (1) L.L.J. 86 [Jeewanlal (1929) Ltd. and Ors. v. Controlling Authority under the Payment of Gratuity Act and Ors.]. Subsequently, the Act was attacked by employers on different grounds and they were repelled by various High Courts and the Supreme Court. Further, the Act has also undergone several amendments taking note of the judicial interpretation given by Courts.

14. The significant change that had come subsequent to the enactment of the Act in the year 1972 was with reference to the ceiling of the maximum amount that can be received by an employee, which has been prescribed u/s 4(3) of the Gratuity Act. Further, though originally the Act provided for disqualification of the entire gratuity by an employer on account of certain conduct of the workmen, Section 6(1)(b) of the Gratuity Act was introduced by amending Act 25 of 1994 stating that the gratuity payable to an employee

may be wholly or partially forfeited. By Section 7(3)(a) of the Gratuity Act, an amendment was introduced to provide for interest on the delayed payment. Section 7(4) provides for resolving a dispute by the Controlling Authority. Section 7(4)(a) and (b) of the Gratuity Act are usefully extracted below:

7(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.

(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.

15. As can be seen from the said provision, a dispute with reference to Payment of Gratuity Act can be raised not only by an employer but even by the employee or any other person by virtue of the amendment introduced in the year 1984. Therefore, when an employee is not paid gratuity in terms of the Act and subsequently, he comes to know about the reduced payment or it has been forfeited partially or fully on grounds not germane to the Act, he can still raise a dispute notwithstanding the fact that he had received the amount payable to him or any one on the contingencies provided u/s 4(1) of the Act.

16. The fact that a receipt has been given only shows the amount actually received by the employee at a particular time and the words "full and final settlement" found therein only relates to the settlement of the account under which the workman is paid. Without signing such a receipt, a workman will not be paid any amount by an employer, who may require such a receipt for account purposes. Though the learned single Judge has correctly held that there cannot be an estoppel against a statute, she has proceeded on a factual finding on the words found in the receipt given by the employee. The learned Judge had not taken note of Section 14 of the Gratuity Act where an overriding effect has been given over any other enactment or any instrument or contract.

17. In this regard, though the learned Judge had referred to the decision of the Division Bench of this Court reported in [Rajamani, wife and Nominee of S. Rajagopalan \(Since deceased\) and 8 others Vs. The Deputy Commissioner of Labour and the Appellate Authority under Payment of Gratuity Act, Tiruchirapalli and 2 others](#), she had factually distinguished the same. We think that such a factual distinction is not possible in the present case. In any event, the learned Judge cannot go beyond the earlier Division Bench judgment wherein a similar issue has been dealt with, which is as follows:

Para 13: The question is whether it is open to any authority either for the management or the appellate authority to give any amount lesser than the amount to which the workmen

are legally entitled to on the ground of waiving their entitlement. There is no possibility or scope for obtaining a receipt for a lesser amount even assuming that it is voluntarily given. The Court has to take judicial note of the fact, that the petitioners are said to be illiterates and they could not have been in a position to raise their voice at the time of recruitment and they had to receive some amount or other a retirement benefit. Probably if they had raised their voice that the amount was not correct, they would not have been given even that amount immediately. In any event, the receipt issued for lesser amount construed that they have given up their claim for remaining amount. The management is duty bound to pay the remaining gratuity amount u/s 7 of the Act and if there is any deficiency in their calculation it is always open to the employee to claim for payment of the balance amount.

18. We are in full agreement with the reasoning in the decision rendered by the earlier Division Bench. The learned single Judge as well as the authorities under the Gratuity Act, viz., respondents 2 and 3, were wrong in refusing to consider the claim made by the appellant on the merit of his claim.

19. Now, coming to the merits of the present appeal, Mr. Balan Haridoss, learned Counsel appearing for the appellant, submitted that Section 4(2) of the Gratuity Act read with Section 2(s) is susceptible for only one interpretation, viz., gratuity will have to be paid on the basis of wages last drawn by the employee concerned and it should be literally construed especially, in the context of Section 2(s) which defines the term "wages". Section 2(s) of the Gratuity Act is extracted below:

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

20. The learned Counsel appearing for the appellant submitted that the definition clearly contemplates not only the wages paid but are also payable to a workman. He drew the attention of this Court to the judgment of the Supreme Court reported in [Jeewanlal \(1929\) Ltd. Vs. Appellate Authority under the Payment of Gratuity Act and Others](#), and more particularly, to the passage found in paragraph 9, which is as follows:

Para 9: In dealing with interpretation of Sub-sections (2) and (3) of Section 4 of the Act, we must keep in view the scheme of the Act. Sub-section (1) of Section 4 of the Act incorporates the concept of gratuity being a reward for long, continuous and meritorious service. Sub-section (2) of Section 4 of the Act provides for payment of gratuity at the rate of "fifteen days" wages" based on the rate of wages last drawn by the employee concerned for every completed year of service. The legislative intent is obvious. Had the Legislature stopped with the words "fifteen days" wages" occurring in Sub-section (2) of Section 4 of the Act there was something to be said for the submission advanced by the learned Counsel for the appellants based upon the decision of learned Single Judge of

the Andhra Pradesh High Court in Associated Cement's case which was later approved by a Division Bench of that Court in Swamy's case. But the Legislature did not stop with the words "fifteen days" wages" in Sub-section (2) of Section 4 of the Act. The words fifteen days wages are preceded by the words "at the rate of" and qualified by the words "based on the rate of wages last drawn" by the employee concerned. The emphasis is not on what an employee would have earned in the course of fifteen days during the month when his employment was last terminated, but on the rate of fifteen days wages for every completed year of service, based on the rate of wages last drawn by the employee concerned. The word "rate" appears twice in Sub-section (2) of Section 4 and it necessarily involves the concept of actual working days. In Shri Digvijay Woollen Mill's case the Court rightly observed that although a month is understood to consist of 30 days, gratuity payable under the Act treating the monthly wages as wages for 26 working days is not new or unknown.

21. The learned Counsel further submitted that even if there is any difficulty in interpretation, the benefit should be given in favour of the workman as it is a piece of social welfare legislation. In this context, he drew the attention of this Court to paragraph 10 of the decision in Jeewanlal (II) (1929) Ltd. case (cited supra), which is as follows:

Para 10: In construing a social welfare legislation, the court should adopt a beneficent rule of construction; and if a section is capable of two constructions, that construction should be preferred which fulfils the policy of the Act, and is more beneficial to the persons in whose interest the Act has been passed. When, however, the language is plain and unambiguous, the Court must give effect to it whatever may be the consequence, for, in that case, the words of the statute speak the intention of the Legislature. When the language is explicit, its consequences are for the Legislature and not for the courts to consider. The argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure and there are two methods of construction. In their anxiety to advance beneficent purpose of legislation, the courts must not yield to the temptation of seeking ambiguity when there is none.

22. However, in this context, it is necessary to refer to the recent decision of the Supreme Court reported in [Beed District Central Co-operative Bank Ltd. Vs. State of Maharashtra and Others](#), wherein the Supreme Court struck a notice of caution and restricted any liberal interpretation only because it is a claim made by the workman and the relevant passage found in paragraph 13 is extracted below:

Para 13: We, however, are of the opinion that the said doctrine cannot be said to have any application whatsoever in the instant case. Undoubtedly, the Payment of Gratuity Act is a beneficial statute. When two views are possible, having regard to the purpose, the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman. However, it is also trite that only because a statute is beneficent in nature, the same would not mean that it should be construed in favour of the workmen only

although they are not entitled to benefits thereof. (See [Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries,](#)

23. Per contra, Mr. A.L.Somayaji, learned Senior Counsel appearing for the first respondent, drew the attention of this Court to the decision of the Supreme Court reported in [State Government Pensioners" Association and Others Vs. State of Andhra Pradesh,](#) and submitted that subsequent pay revision will have no bearing on the employees, who have already retired and received their gratuity. He drew the attention of this Court to the passage found in paragraph 2 of the judgment, which is extracted below:

Para 2: ...Similar is the case with regard to gratuity which has already been paid to the petitioners on the then prevailing basis as it obtained at the time of their respective dates of retirement. The amount got crystallized on the date of retirement on the basis of the salary drawn by him on the date of retirement. And it was already paid to them on that footing. The transaction is completed and closed.

The said decision has got no relevance to the case on hand because that was a gratuity payable under a Pension Scheme. Therefore, the Supreme Court considered the issue in the context of the scheme evolved by the Government and held that subsequent wage revision can have no bearing on the amount of wages already paid and settled between the parties.

24. The learned Senior Counsel also drew the attention of this Court to the decision reported in [HEC Voluntary Retd. Emps. Welfare Soc. and Another Vs. Heavy Engineering Corporation Ltd. and Others,](#) and more particularly, referred to paragraph 19 of the judgment and the same is extracted below:

Para 19: It is not in dispute that the effect of such Voluntary Retirement Scheme is cessation of jural relationship between the employer and the employee. Once an employee opts to retire voluntarily, in terms of the contract he cannot raise a claim for a higher salary unless by reason of a statute he becomes entitled thereto. He may also become entitled thereto even if a policy in that behalf is formulated by the Company.

As can be seen from the above passage, after a claim for voluntary retirement which is contractual, no further claim can be made on the basis of a new revision of wages made. It has got no relevance while considering the statutory scheme under the Gratuity Act.

25. Thereafter, the learned Senior Counsel submitted that the term "last drawn" must be understood in the context of the obligation of the employer to pay gratuity on the day which he retires from service or dies while in service or resigns and there is a statutory period to settle the dues and unless that is done, the employer may be mulcted with interest as well as prosecution. Therefore, there must be a certainty in arriving at the rate of wages over which gratuity is payable to an employee, on the day on which the contingency for payment of gratuity arises.

26. The learned Senior Counsel thereafter, referred to the decision of the Supreme Court reported in [Delhi Cloth and General Mills Co., Ltd. Vs. Workmen and Others etc.](#), to drive home the point that gratuity should be calculated only on the basic wages and not DA and the said judgment must be taken note of. We are unable to agree with the said submission made by the learned Senior Counsel. The following passages found in the said judgment are usefully extracted below:

It is clear that in the gratuity schemes operative at present to which our attention has been invited, in force in the textile industry, payment of gratuity is related not to consolidated wages but to basic wages. It is true that under the scheme which is in operation in the D.C.M. and S.B.M. payment which is related to the length of service may in some cases exceed the maximum awardable under a scheme of gratuity benefit related to basic wages. But that cannot be a ground for making a vital departure from the prevailing pattern in the other textile units in the country. It may be necessary to protect the interest of the members governed by the original scheme.

Determination of gratuity is not based on any definite rules. In each case it must depend upon the prosperity of the concern, needs of the workmen and the prevailing economic conditions, examined in the light of the auxillary benefits which the workmen may get on determination of employment. If all over the country in the textile centres payment of gratuity is related to the basic wage and not on the consolidated wage, any innovation in the Delhi region is likely to give rise to serious industrial disputes in other centres all over the country. The award if confirmed would not ensure industrial peace: it is likely to foment serious unrest in other centres. If maintenance of industrial peace is a governing principle of industrial adjudication, it would be wise to maintain a reasonable degree of uniformity in the diverse units all over the country and not to make a fundamental departure from the prevailing pattern. We are, therefore, of the view that the tribunals' award granting gratuity on the basis of consolidated wage cannot be upheld....

The above passages will clearly show that the Supreme Court had dealt with a scheme framed by the Industrial Tribunal in the process of an industrial adjudication and by considering the region-cum-industry principle, the Supreme Court modified the Award of the Industrial Tribunal.

27. At present, we are concerned with the statutory enactment made by the Parliament and the principle of industrial adjudication cannot be read in to a statutory enactment made by the Parliament. In fact, a Division Bench of the Orissa High Court vide its decision reported in 1987 (I) L.L.N. 364 [Ambika Saw Mill v. Assistant labour Commissioner and Ors.] dealt with the term "wages" found in the Gratuity Act and observed in paragraphs 12 and 13 of the judgment as follows:

Para 12: The chief feature of the definition of "wages" in the Payment of Gratuity Act is that it refers to the payments and in cash, paid or payable to an employee, that is, "all emoluments earned while on duty or on leave." The emoluments must be earned in

accordance with the terms and conditions of employment and be paid or payable in cash.

13. According to Webster"s Dictionary "emoluments" means:

The profit arising from office or employment usually in the form of compensation or perquisite; (something necessary to the carrying out of a function).

28. In a recent decision of the Supreme Court reported in [Management of KSRTC th. Chief Law Officer Vs. R. Krishna Reddy](#) , the Supreme Court was considered a benefit payable under the Gratuity Act linked to the term wages payable under a "settlement" by which wages were raised. The Supreme Court held that as per the settlement providing rates of DA, which was to be on par with the rates sanctioned by the Government, an employee was entitled to gratuity based on the revised wage in terms of the Government Order implementing the settlement. In this context, it will be relevant to extract paragraph 16 of the said judgment:

Para 16: We have noticed herein before that the Government of Karnataka in terms of Government Order dated 28.11.1995 inter alia directed that 90% of Basic Pay is to be added to pay for calculating gratuity. If the basic pay of an employee was upto Rs. 3500/- per month and was drawing a Dearness Allowance of Rs. 2000/-, what was to be added was the 90% of the Dearness Allowance which was being paid. If 90% of the Basic Pay as Dearness Allowance is to be added to the basic pay, the employee became entitled to higher wages on the basis thereof. It is in that sense the question of application of the merger of Dearness Allowance with the scale of the pay arose for all intent and purport. As was rightly held by the learned Single Judge, different terminologies used did not make any material difference. Section 4 of the Act itself contemplates implementation of a settlement. Settlement, therefore, entered into by and between the parties was required to be interpreted having regard to the intention of the parties. What was contemplated by the parties was the rates of Dearness Allowance would be at par with the rate sanctioned by the State Government to its employees from time to time and from the same date. It was never contemplated that a different amount of gratuity shall be payable to an employee who retires prior to the revision of scale of pay although the terms of the settlement are applicable to his case.

29. In 1997 2 L.W. 828 [N. Sivadasan v. The Appellate Authority under the Payment of Gratuity Act - I, Madras - 6, and Ors.], a Division Bench of this Court while interpreting the definition of the term "wages" found in the Gratuity Act resolving Food Allowance given to a hotel employee came to the conclusion that the definition of wages in the Gratuity Act means all emoluments, which are earned by employee while on duty. The said decision throws certain light on the term "wages paid or payable" found in the definition and the relevant passages found in paragraphs 8 and 9 of the judgment are extracted below:

Para 8: Even otherwise, "wages" when defined to mean as comprehending 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 payable to him, the sum total of all payments, perquisites and advantages or gains arising from such employment, except those that are specifically excluded in the definition of "wages" would fall within the definition of "wages". As rightly contended for the appellant by the learned Counsel, the legislation in question being a beneficial legislation with a purpose and spirit underlying the same a purposive construction to perpetuate the intention to fructify the beneficial purpose must be adopted, instead of taking a literal view of certain words alone ignoring the spirit behind the same....

Para 9: In this case, it is matter of record that the free supply of food or equivalent value is a term of contract in the agreement between the parties and that such of those employees in the very establishment of the third respondent, who do not factually take their food or tiffin were, as a matter of fact, paid the money or cash equivalent therefor. If that be the position, the aggregate in respect of such person would take within its fold for the purpose of the Act such amount too. It would be anomalous to take into account or not the said money value or cash equivalent of the food and tiffin depending upon merely the fortuitous circumstances as to whether a particular employee has consumed food or tiffin or has received the cash value without consuming such food articles.

30. However, the learned Senior Counsel drew our attention to the judgment of the Supreme Court reported in 1998 (I) L.L.J. 1 [Dena Bank v. Kiritikumar T. Patel] wherein the Supreme Court had an occasion to interpret the provisions of Section 17-B of the I.D. Act. Paragraphs 21 and 22 of the judgment are extracted below:

Para 21: The first construction gives to the words "full wages last drawn" their plain and material meaning. The second as well as the third constructions read something more than their plain and material meaning in those words. In substance these constructions read the words "full wages last drawn" as "full wages which would have been drawn". Such an extended meaning to the words "full wages last drawn" does not find support in the language of Section 17-B. Nor can this extended meaning be based on the object underlying the enactment of Section 17-B.

Para 22: As indicated earlier Section 17-B has been enacted by Parliament with a view to give relief to a workman who has been ordered to be reinstated under the award of a Labour Court or the Industrial Tribunal during the pendency of proceedings in which the said award is under challenge before the High Court or the Supreme Court. The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words "full wages last drawn". To read these words to mean wages which would

have been drawn by the workman if he had continued in service if the order terminating his services had not passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words "full wages last drawn" must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in *Visveswaraya Iron & Steel Ltd.*⁵ or the Bombay High Court in *Carona Sahu Co. Ltd.* (Supra)

31. The said decision has no application to the context in which the present case is being determined. Section 17-B of the I.D. Act is in the nature of interim relief pending final adjudication by the High Court of an Award granting the benefit of reinstatement to a workman. The Supreme Court made it clear that the payment u/s 17-B of the I.D. Act was in the nature of a Subsistence Allowance and even if the workman loses his case before the High Court, the said amount cannot be recovered. We do not know as to how the judgment is helpful to the case of the first respondent Management. Even otherwise, if the issue received close scrutiny, it will be seen that if an Award passed by the Tribunal / Labour Court is upheld by the High Court, then the wages payable to the workmen will be in accordance with the Award passed by the adjudicating forum and not the wage last drawn by the employee at the time of dismissal.

32. In [Regional Authority, Dena Bank and Another Vs. Ghanshyam](#), the Supreme Court held that apart from the payment u/s 17-B of the I.D. Act, the High Court has got inherent power under Article 226 of the Constitution of India to grant something more and in the event of such an order is being passed, all that it requires was that the Court must direct such an extra payment subject to certain terms. In this context, it is relevant to extract paragraphs 12 and 13 of the said judgment:

Para 12: We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last-drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of Objects and Reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17-B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits more just and equitable on the facts of a case than contemplated by that provision to a workman. By an interim order the High Court did not grant relief in terms of Section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of "full wages last drawn" to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned

order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

Para 13: It must, however, be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer u/s 17-B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition (see Dena Bank case) any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interests of justice to ensure, if the facts of the case so justify, that payment of any amount over and above the amount payable u/s 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

33. The Supreme Court in its decision reported in [Bharagath Engineering Vs. R. Ranganayaki and Another](#), interpreted Section 2(14) of the Employees' State Insurance Act, 1948 [for short, "E.S.I. Act"] giving benefit. Though not directly applicable to the present case, yet as it is an issue interpreting Section 2(14) of the said Act and it was given a purposeful interpretation. It is relevant to extract paragraphs 6, 7 and 8 of the said judgment where the rival contentions of parties and the sum up has been given:

Para 6: Learned Counsel appearing for the Corporation submitted that Section 2(14) of the Act was wide enough to cover an employee who dies even before the registration with the Corporation. According to him, the benefit under the Act is more beneficial to the employee than the compensation that could be awarded under the Compensation Act.

Para 7: Learned Counsel appearing for the claimant, on the other hand, submitted that only when the person is registered for the purpose of insurance with the Corporation, the Act has application and it is not that all the employees are automatically insured. What is contemplated u/s 38 of the Act, which is a statutory requirement, is to insure all the employees.

Para 8: Section 2(14) of the Act, which is the pivotal provision, reads as follows:

"Insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act.

Para 9: It is to be noted that the crucial expression in Section 2(14) of the Act is "are or were payable". It is the obligation of the employer to pay the contribution from the date the Act applies to the factory or the establishment.

34. In the light of the above discussion, we have no hesitation in holding that the order of the learned single Judge is erroneous and contrary to the provisions of the Gratuity Act and, therefore, it is liable to be set aside. In the present case, the appellant workman and the first respondent employer are governed by the terms of the Settlement signed u/s 12(3) of the I.D. Act. One of the terms of the settlement is revision of DA and in the

present case on hand, the employer had agreed to pay Variable Dearness Allowance (VDA) as per the Cost of Living Index (CLI) and it envisages periodical monthly revision on the basis of variation in the Cost of Living Index figures.

35. The argument of the learned Senior Counsel that the figures for the month of July 1998 came to be given later when the appellant had retired by ninth July 1998 and, therefore, when his gratuity account were settled, they had only the figures for the month of June 1998. In view of the outer time limit given under the Act to settle the payment of Gratuity, the first respondent Management cannot eternally wait for the figures to be supplied by the concerned Government Department and all these years, they have been settling gratuity only on the basis of figures that are available on the date of death / retirement / termination of their workmen and if the appellant alone has to be dealt with differently, then it will result in a Pandora's box being opened in respect of all and hence, the long term practice adopted by the Management should be approved by the Court. We are not impressed with this line of argument. The Gratuity Act is a beneficial piece of legislation and it should receive an interpretation consistent with the principles of equity and fair play. Therefore, the term "last drawn wage" found in Section 4(2) of the Gratuity Act should receive its full meaning and it cannot give any fractured interpretation. Further, the settlement provides as to what should be the wages that should be paid to a workman and that the Management cannot adopt an artificial interpretation with reference to the term "wages". It is in this context, the term "wages" which is defined under the Gratuity Act, must include not only what is paid but also what is payable to a workman. If there was a bonafide delay in the payment of Gratuity on account of calculations to be made by taking into account the Variable Dearness Allowance, at the best, the Management may not be accused of any deliberated delay so as to be mulcted with any interest and on account of the delayed payment. Even otherwise, the Act u/s 7(3) provides for a time limit of 30 days to settle the payment of gratuity payable to a workman.

36. In the light of the above, the writ Appeal shall stand allowed and the order of the learned single judge confirming the orders of the respondents 1 and 2, to the extent indicated above will stand set aside. The first respondent is directed to pay the appellant the difference in the gratuity payable to him and as claimed by him before the Controlling Authority within a period of four weeks from today. Though the appellant had claimed interest on the delayed payment, since this issue had come up before the Court for the first time, we are not inclined to order any interest on the gratuity amount to be paid to him. However, the parties are directed to bear their own costs.