(2009) 04 CAL CK 0028

Calcutta High Court

Case No: Writ Petition No. 22336 (W) of 2008

Steel Authority of India Limited and Another		APPELLANT
	Vs	
Taraknath Sengupta and Others		RESPONDENT

Date of Decision: April 3, 2009

Acts Referred:

- Payment of Gratuity Act, 1972 - Section 14, 4(6)

Citation: (2010) 126 FLR 32

Hon'ble Judges: Dipankar Datta, J

Bench: Single Bench

Advocate: L.K. Gupta and Soumendra Kumar Ghosh, for the Appellant;

Judgement

Dipankar Datta, J.

The first respondents was an employee of the first petitioner(hereafter the company). On attaining the age of superannuation, he retired on 31.12.1998.

2. The first respondents had the occasion to approach the Controlling Authority under the Payment of Gratuity Act (hereafter the Act), since the Company did not release gratuity to which he was entitled in law. The company resisted his claim. According to it, despite cessation of employer-employee relationship, the first respondents did not vacate the official accommodation that had been allotted to him. It was only on 20.4.2004 that the company could recover possession thereof. For unauthorized occupation of official accommodation, the first respondents was liable to pay penal rent amounting to Rs. 81,562.50p. That apart, he was liable to pay outstanding house rent of Rs. 36/- and outstanding electricity charges of Rs. 41,891/- apart from bearing the charges of a missing RRC slab worth Rs. 400/-. The company was ready and willing to pay gratuity to the first respondents after deducting a sum of Rs. 1,23,889.50p from the gratuity payable, being Rs. 1,99,185/-. The net payable amount of Rs. 75,295.90p was offered to the first respondents who refused to

accept it. In terms of the Gratuity Rules of the company, it was authorized to deduct gratuity payable to an ex-employee if he did not vacate accommodation provided to him. It was, therefore, contended that over and above the sum which was offered to the first respondents, he was not entitled to anything more.

3. The Controlling Authority did not accept the contention of the company and by its order dated 24.7.2006, directed the company to make full payment of gratuity i.e. Rs. 1,99,185/- within 30 days from date of the order.

4. Feeling aggrieved, the company preferred an appeal before the appropriate appellate authority under the Act. The Appellate Authority by its order dated 28.2.2008 dismissed the appeal and confirmed the order of the Controlling Authority.

5. The order of the Appellate Authority affirming the order of the Controlling Authority, directing payment of full amount of gratuity to the first respondents without making any deduction from the subject matter of challenge the present petition.

6. Despite service of notice, none has appeared either for the first respondents or the authorities under the Act who are the other respondents in the petition.

7. Mr. Gupta, learned Senior Advocate representing the company contended that in terms of its Gratuity Rules, which had not been questioned by the first respondents, the company was entitled to deduct amounts on account of penal rent, electricity charges, and other dues from the gratuity payable to the first respondents and, therefore, the Controlling Authority and the Appellate Authority under the Act erred in law in allowing the application filed by the first if respondent and dismissing the company''s appeal respectively.

8. Referring to the provisions of section 4(6) of the Act, he contended that forfeiture of the whole or part of gratuity payable to an employee is permissible in terms thereof; however, since the first respondents service had not been terminated on any of the grounds referred to in section 4(6), the company had not forfeited any part of gratuity payable to him but had proceeded to deduct from gratuity the amounts that were due to it from the first respondents. A distinction, according to him, has to be drawn between a forfeiture and deduction. He placed Black''s Law Dictionary which defines forfeiture as:

something to which the right is lost by the commission, of a crime or fault or the losing of something by way of penalty.

9. Elaborating on this point, he further contended that the company had not forfeited any part of gratuity payable to the first respondents; instead, it allowed him 100% of gratuity payable to him but has then deducted a portion there from on account of dues which the first respondents owes to the company. Since the company has proceeded to deduct a portion of the dues from the gratuity payable

to the first respondents, neither section 4(6) of the Act nor section 13 thereof could stand in the way. The action of the company being in accordance with the Gratuity Rules framed by it, the authorities under the Act failed to appreciate the issue before them in the proper perspective and, accordingly, returned findings which are erroneous in law.

10. In support of the contention that deduction from gratuity could be made for realization of penal rent, reliance was placed by him on the decision in Wazir Chand v. Union of India and others. 2008 (87) FLR 778. A Division Bench decision of this Court in M.A.T. No. 427 of 2005 (Bhola Mishra v. The Union of India) dated 5.5.2005 was also relied on in this regard. For the proposition that forfeiture of gratuity is not the same as deduction there from of an amount payable by an employee to his employer, reliance was placed by him on the decision of a learned Judge of this Court in Sardar Sohan Singh v. Union of India and others 2007 Lab IC 1345.

11. Based on the aforesaid submissions, he prayed for setting aside of the orders of the authorities under the Act.

12. Upon hearing Mr. Gupta, the issues that arise for a decision on this petition are as follows:

(1) Whether the company was justified in its action of offering Rs. 75,295.90p to the first respondents after deducting a sum of Rs. 1,23,889.50p from the total amount of gratuity of Rs. 1,99,185/- payable to the first respondents Whether the authorities under the Act acted within their jurisdiction in allowing the claim of the first respondents?

(2) Whether the authorities under the Act acted within their jurisdiction in allowing the claim of the first respondents?

13. Before this Court proceeds to decide the issues formulated above, the provisions of the Act and the Gratuity Rules which are considered relevant for decision may be noticed. Sections 4(6), 13 and 14 of the Act and Rule 3.2.1(c) of the Gratuity Rules are extracted hereunder:

Section 4. Payment of gratuity-

(6) Notwithstanding anything contained in sub-section (1), -

(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, on destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee may be wholly or partially forfeited-

(i) if the services of such employee have been terminated for his riotous of disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such an offence is committed by him in the course of his employment.

Section 13. No gratuity payable under this Act and no gratuity payable to employee employed in any establishment, factory, mine, oilfield, plantation, Port, railway or shop exempted u/s 5 shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

Section 14. 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.

Rule 3.2.1(c) - The company will have the right to withhold the gratuity amount payable to an ex-employee or his nominee/legal heir(s), in case of his death, for non-compliance of Company''s rules including non-vacation of Company''s accommodation. No interest shall be payable on the gratuity amount so withheld for the period of unauthorized occupation of Company''s accommodation and up to one month after the vacation of the Company''s accommodation.

14. It is noticed from a copy of the Gratuity Rules of the company that has been placed before the Court that the same were approved by the Board of directors of the company in its 46th meeting held on 8.8.1978 and are effective from that date. The company is a Central Government undertaking. It is, therefore, clear that the Gratuity Rules of the company have not been framed in pursuance of any statute and have no statutory force.

15. The decision in Wazir Chand (supra), cited by Mr. Gupta, has happen linked into. It does not lend any assistance to this Court to decide the issue. In its short judgment, the Apex Court held that "we are unable to accept this prayer of the appellant in the facts and circumstances of the present case." No principle of law, thus, was laid down. This Court does not consider the decision to be one, which in view of Article 141 of the Constitution is having a binding effect.

16. The Division Bench decision in Bhola Mishra (supra) was rendered on concession of the employee and does not lay down any law, which ought to be followed.

17. It is true that the decision in Sardar Sohan Singh (supra) is one directly on the point. If this Court could share the view expressed by the learned Judge therein, the contention advanced by Mr. Gupta ought to be accepted that there is a distinction between forfeiture of gratuity envisaged under the Act and withholding/deduction of part of the gratuity for recovering dues payable by the first respondents to the company.

18. However, with deepest of respect, this Court is unable to concur with the principle of law laid down in Sardar Sohan Singh (supra). Ordinarily, this Court would

have referred the issue for a decision by a Division Bench in view of such disagreement, but for reasons to be assigned hereafter, this Court does not consider it necessary to refer the issue to a Division Bench since the law on the point has already been settled by decisions of the Apex Court as well as a Division Benches of this Court some of which were noticed by the learned Judge, and some not, reference to which shall be made at a later part of this judgment.

19. The facts in Sardar Sohan Singh (supra) and the law laid down therein may now be noticed. The employee was occupying quarters allotted to him by the employer, Indian Iron and Steel Company Ltd. According to the rules and Regulations of the employer, he was entitled to retain the quarters for two months after his retirement. Though the employee retired on 30.6.2003, he retained the quarters till 6.11.2004 when possession thereof was given to the employer. He had during his tenure under the employer suffered a minor penalty of reduction of pay. He, however, was paid some sum in excess. The employer released the gratuity amount payable to him after deducting its dues including amounts on account of house rent (normal and penal) as well as unpaid electricity consumption charges.

20. A host of decisions were cited on either side. These decisions included the decision in Bhola Mishra (supra), Wazir Chand (supra), Jaswant Singh Gill Vs. Bharat Coking Coal Ltd. and Others, , Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warrier, , Mining and Allied Machinery Corporation Vs. Ram Ranjan Mukherjee and Others and Tapan Bhattacharjee and Others, and a decision of the Kerala High Court in Travancore Plywood Industries Ltd. Vs. Regional Joint Labour Commissioner and Others, The learned Judge while distinguishing most of the cases that were cited and disagreeing with the view expressed in Travancore Plywood (supra) held as follows:

With great respect to his Lordship, I am unable to agree with him that in view of provisions in sections 4(6), 13 and 14 of the Payment of Gratuity Act, 1972 an employer cannot withhold payment of gratuity on the ground that the employee concerned failed to surrender his property (there it was land). The question in that case, however, was not whether the employer could deduct his dues from the gratuity payable to his employee under provisions of that Act. Putting such a prohibition against the employer''s right, in my opinion, will simply amount to rewriting the legislation itself. Forfeiture or attachment of the gratuity on a part thereof is not the same thing as deduction there from of an amount payable by the employee to his employer is. If it is said that because of provisions in section 4(6) deduction is a forbidden thing then even for admitted dues, the employee, without making his employer contravene the provisions, will not be in a position to ask his employer to deduct the dues from his gratuity. I do not see any reason why the Court should see a prohibitory provision that the legislature never made.

Nothing prevented the legislature from putting a prohibition as visualized and contended by Counsel for the Petitioner. In the absence of an express prohibition

against recovery of its dues by the company from the gratuity payable to the Petitioner, I am unable to accept the case that was not empowered to do that. The gratuity rules whereby the company was governed are not in question. In terms thereof the company was empowered to deduct any amount due to it. I am unable to agree with Counsel for the Petitioner that the provisions conferring that right on the company are inconsistent with any provision of the Payment of Gratuity Act, 1972. This statute does not deal in any manner with the employee right to deduct his dues from the gratuity payable to his employee.

21. However, the learned Judge found substance in the contention of the employee that deduction could not have been effected without putting him notice. Since the decision to deduct amounts due from the gratuity was bound entail the employee with civil and evil consequences, the employer was direct to give him opportunity of showing cause and, thereafter, to proceed to deduction any amount determined to be due to it. The order was so passed upon holding that in terms of its Gratuity Rules, the employer was empowered and entitled deduct its dues on all accounts from the gratuity payable to the employee.

22. In terms of provisions contained in the Act, gratuity is payable to employee covered by it by his employer not as a bounty or as a gratuity payment; instead, it is a payment which is earned by an employee for meritorious service rendered by him over a period of time.

23. The scheme of the Act was noticed in State of Punjab Vs. Labour Court Jullunder and Others, wherein it was observed as follows:

7. It is apparent that the Payment of Gratuity Act enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. It creates the right to payment of gratuity, indicates when the right will accrue, and lays down the principles for quantification of the gratuity. It provides further for recovery of the amount, and contains an especial provision that compound interest at nine per cent per annum will be payable on delayed payment. For the enforcement of its provisions, the Act provides for the appointment of a controlling authority, who is entrusted with the task of administering the Act. The fulfillment of the rights and obligations of the parties are made his responsibility, and he has been invested with an amplitude of power for the full discharge of that responsibility. Any error committed by him can be corrected in appeal by the appropriate Government or an appellate authority particularly constituted under the Act.

24. The Bombay High Court, after noticing the aforesaid decision, in Ramjilal Chimanlal Sharma v. Elphinstone Spinning and Weaving Mill Company Ltd. 1984 Lab IC 240, observed as follows:

5. ****The contention cannot be accepted because the right to the amount of gratuity is not circumscribed or made dependent on the conduct of the employee

subsequent to the date of his retirement. A right to secure gratuity amount cannot be defeated or cannot be used as lever by the employer for securing back possession of the premises from the company. It is not permissible under the Payment of Gratuity Act to withhold the amount for any reason and in my judgment even though the conduct of the company in holding back possession of the premises is not very praiseworthy still that is not a sufficient reason to deprive him of the right of gratuity. ****

25. A learned Judge of this Court while deciding Madan Mohan Laik v. Coal India Ltd. and others 1997 Lab IC 240, agreed with the view of the Bombay High Court.

26. This Court humbly shares the view. Since the Act itself provides for quantification of gratuity as well as its recovery, it would be open to an employer to make supplemental provisions for promoting the object of the Act but making of provisions which in effect curtails an employee''s right to receive gratuity under the Act is not legally permissible. The provision contained in section 14 of the Act has overriding effect and therefore is a prohibition against application of any other law or terms of instrument or contract inconsistent therewith to deny an employee his due gratuity except to the extent authorised by section 4(6) thereof. The employer is thus not entitled in law to effect any deduction from gratuity on account of any misdemeanor or objectionable conduct of an employee, post-retirement. There is no warrant for the proposition that any amount which an employee may owe to his employer in respect of acts of omission/commission after he has retired from service can be deducted from his gratuity even though the rules of the employer may permit the same. The right to gratuity under the Act is statutory. Having regard to the provisions of section 14 of the Act, any non-statutory rule (which is nothing but an instrument as is referred to therein) inconsistent with the provisions of the Act cannot impair the statutory right to receive gratuity, which flows from the Act. It is only when are employee''s service is terminated on grounds of the nature specified in Clauses (a) and (b) of sub-section (6) of section 4 of the Act that he forfeits his right to receive gratuity under the Act and not otherwise. The reasoning of the learned Judge in Sardar Sohan Singh (supra) that a prohibitory provision which the legislature never made in the Act cannot be read in the statute thereby disentitling and employer to make deduction from gratuity, does not appeal to this Court to be correct since provisions of the Act impliedly exclude recourse to any other provision inconsistent therewith relating to non-payment of gratuity.

27. Retention of official accommodation by the first respondents which was allotted to him while he was in employment under the company illegally, as contended by it, is not at all linked with the service rendered by him and therefore, gratuity payable to him could not have been linked with alleged illegal retention thereof. An employee covered by the provisions of the Act is entitled to gratuity for service rendered by him and the right which has accrued in his favour cannot be allowed to be impaired except to the extent permitted by the Act.

28. The maxim expressum facit cessare taciturn meaning "when there is express mention of certain things, then anything not mentioned is excluded" would apply in construing the Act. This well-known maxim which is a principle of logic and common sense and not merely a technical rule of construction has been applied by the Apex Court in a number of cases reference to which, however, is not considered necessary.

29. The silence in the Act must be held not to have allowed withholding deduction from gratuity payable to an employee and it is not necessary to construed the statute in a manner construed by the learned Judge in Sardar Sohan Singh (supra) that there is no requirement of reading a prohibitory provision that the legislature never made. In this connection, it would also be useful to refer to the decision in Moniruddin Bepari v. The Chairman of the Municipal Commissioners, Dacca XL CWN 17 which has also been followed as late as in Bipad Taran Patra v. State of West Bengal (1994) II CLJ 450.

Hon''ble R.C. Mitter, J. in Maniruddin (supra) observed as follows:

It is a fundamental principle of law that a natural person has the capacity do all lawful things unless his capacity has been curtailed by some rule of law. It is equally a fundamental principle that in the case of a statutory corporation it is just the other way. The Corporation has no power to do anything unless those powers are conferred on it by the statute which creates it.

31. Though the company is not a statutory authority, yet being a Central Government undertaking, it is an Article 12 authority and is thus discharging public functions. In all its actions, it must be guided by Articles 14 and 21 of the Constitution. The right of forfeiture of gratuity that is statutorily provided to the company can, if the situation so demands, be exercised strictly in accordance therewith or not at all. Since the Act does not permit withholding/deduction gratuity for realization of dues payable by an employee to it, such power cannot be exercised on the assumption that there is no express prohibition in the status. It could take recourse to withholding/deduction if such power had been statutorily conferred without the same being inconsistent with the Act. It is fallacious to assume that when forfeiture of gratuity is not permissible except in grave situations arising out of an employee''s misconduct during service, his gratuity could be withheld or deduction made there from for an incident after cessation of employer-employee relationship which the company considers is against its rules. Gratuity Rules of the company are not statutory and, therefore, would not in the circumstances confer any right on it to deduct any amount on account of liability incurred by an employee, if at all, subsequent to his retirement.

32. The aforesaid view this Court has taken finds support from the Division Bench decision of this Court in Eastern Coalfields Limited v. Kripa Sankar Somany 2004 (103) FLR 1174. It was held therein that no Regulation authorizing

forfeiture/withholding of gratuity can be sustained if the incident for which action is proposed to be taken does not come within the exceptions provided in section 4 (6) of the Act. The Division Bench also ruled that service Regulations or rules inconsistent with section 4(6) of the Act has to yield to the provisions contained in section 4(6) of the Act and shall stand superseded by reason of section 14 thereof.

33. The Gratuity Rules (insofar as it permits the employer to deduct any sum towards dues payable by the employee) which are not statutory in nature and are wholly inconsistent with the scheme of the Act can have no effect having regard to provision of section 14 thereof. Such non-statutory rules could not have been pressed into service to render the scheme of the Act nugatory. To the extent the decision in Sardar Sohan Singh (supra) fails to consider section 14 of the Act in the proper perspective, it ceases to have the effect of a binding precedent. This Court is conscious that a misreading of a provision in a decision would as much be binding on a subsequent Bench of co-ordinate strength but apart from a casual reference to section 14 of the Act in the portion quoted above, there appears to be, no real consideration of its effect in the decision as well as appreciation of the law laid down in Jaswajit Singh Gill (supra). The said decision was distinguished only on the ground that the issue therein was of forfeiture of gratuity which was not the issue before His Lordship. Paragraphs 11 and 12 of the decision in Jaswant Singh Gill (supra) being relevant, are quoted below:

11. Power to withhold penalty (sic gratuity) contained in Rule 34.3 of the Rules must be subject to the provisions of the Act. Gratuity becomes payable as soon as the employee retires. The only condition therefore is rendition of five years continuous service.

12. A statutory right accrued, thus, cannot be impaired by reason of a rule which does not have the force of a statute. It will bear repetition to state that the Rules framed by Respondent 1- or its holding are not statutory in nature. The Rules in any event do not provide for withholding of retrial benefits or gratuity.

(Emphasis supplied)

34. This Court has noted that the rules of the employer in Jaswant Singh Gill (supra) did not provide for withholding of gratuity but that was only an additional reason that was cited by the Apex Court while interdicting the employer''s action which was the subject matter of challenge.

35. Following the decision in Jaswant Singh Gill (supra), it is held that the Gratuity Rules of the company not being statutory, the same could not have unpaired the right of the first respondents to receive gratuity in its entirety. The decision of the Kerala High Court in Travancore Plywood (supra) supports the view this Court has taken and this Court respectfully agrees with the same.

36. It is to be noted that Mr. Gupta did not question the first respondents entitlement to receive gratuity under the Act. Provision of Rule 3.2.1 (c) of the Gratuity Rules of the company, thus, was not required to be challenged by him.

37. Mr. Gupta suggested that 100 % gratuity has been allowed to the first respondents and thereafter a deduction has been made there from for meeting the dues of the first respondents. The contention is unacceptable. One could appreciate if the first respondents could see the colour of gratuity in its entirety and had then volunteered to sacrifice a part of it to the extent of dues of the company. Right to receive gratuity being statutory, the first respondents could have waived such right (a statutory right can be waived is settled law) and I allowed adjustment thereof with the dues without the company having to contravene the provisions of the Act, a situation which the learned Judge deciding Sardar Sohan Singh (supra) perhaps missed to visualize.

38. It is also noticed from the pleadings before the authorities under the Act that the first respondents did not vacate the official accommodation allotted to him soon after his retirement because the company deliberately delayed release of retirement benefits in his favour. The contention could be right or wrong. It is not for this Court to decide this issue. However, this fact is referred only to emphasize that in a given case even if the employer is at fault in not releasing retrial benefits in favour of the employee on time which results in the employee not vacating the official accommodation according to the employer''s House Allotment Rules and if the dispute takes a sufficiently long time to be resolved and in the process gratuity payable under the Act is withheld for no good reason than that the employee has not vacated the residential accommodation, the very purpose of enactment of a social welfare legislation like the Act providing for immediate payment of gratuity after retirement would be completely frustrated. In view thereof and having regard to the settled law that gratuity must be paid immediately after retirement, this Court is not minded to hold that in terms of the Gratuity Rules the company would be entitled to deduct unpaid normal and penal rent from the gratuity payable to the first respondents.

39. At this stage, it would be profitable to refer to the decision in Rabindra Nath Banerjee Vs. The Certificate Officer and Others,) which the learned Judge in Sardar Sohan Singh (supra) did not have the occasion to consider. There, a learned Single Judge of this Court even held that the provisions of section 22 of the Sick Industrial Companies Act, 1985 (hereafter SICA) would not override provisions of the Act in the following words:

12. Having regard to such legal position, it appears before this Court that section 22 of SICA, 1985 if is considered as an embargo to realize the gratuity amount under Payments of Gratuity Act, 1972 upon giving an overriding effect of the said section, then such provision to that extent whereby and where under a view would be reflected that it affects the emanated fundamental right under Article 21 of the

Constitution of India to receive the retirement benefits after retirement to sustain the retired life, is highly disproportionate to the object sought for and in that angle also the argument of the respondent No. 3 that section 22 of SICA, 1985 is an embargo for realization of arrear gratuity amount with interest by recovery proceeding is not legally sustainable.

40. Since it has been held that in case of conflict between section 22 of the SICA and the Act the latter would prevail, there is no plausible reason to give the Gratuity Rules of the company an exalted status so as to override provisions of the Act.

41. It would also be worthwhile to note the decision in Mining & Allied Machinery Corporation (supra). Upon considering the provisions of section 4(6) of the Act, the Division Bench held as follows:

7. Under the provisions of the said Act, 1972 the employer is entitled to withhold the payment of gratuity only under three circumstances:

(i) the service of an employee is terminated for willful omission or negligence on the part of the employee causing loss or damage or destruction of the property belonging to the;

(ii) service of the employee is terminated for riotous or disorderly conduct or any other act of violence;

(iii) termination of service due to an offence involving moral turpitude committed in course of this employment.

8. Reliance was placed in this regard on three Apex Court decisions which are as follows:

(1) Calcutta Dock Labour Board and Another Vs. Smt. Sandhya Mitra and Others, ,

(2) D.V. Kapoor v. Union of India and others 1990 (61) FLR 429 .

13. In our view, the learned Judge correctly approached the situation and rightly held against the Appellant and directed them to pay the deducted amount to the respective employees being the writ companies respondents and we do not find any scope of interference.

14. As a result, the appeals fail and are hereby dismissed.***

42. To distinguish the decision in Mining 85 Allied Machinery Corporation (supra), the learned Judge in Sardar Sohan Singh (supra) observed as follows:

The first question for decision is whether the matter directly in issue in the present case is covered by any binding precedent. I am unable to agree with Counsel for the parties that it is. In so far as the division bench decision of this Court in Mining & Allied Machinery Corporation''s case is concerned, suffice it say that cannot be considered a binding precedent to govern the question directly in issue in this case,

since there their Lordships were not considering whether provisions of the Payment of Gratuity Act, 1972 would stand in the way of deduction, even when the gratuity rules of the company provided for deduction, from gratuity, of amounts payable to the company on any account including on account of normal and penal rent for withholding delivery of quarters by the employee concerned. From the decision it does not appear either whether in that case the question of deduction was governed by any gratuity rules of the company concerned.

43. True it is that from the Division Bench decision it does not appear as to whether or not there existed any rule of the employer authorizing deduction from gratuity payable to the employees for not vacating residential accommodation allotted to them. However, for reasons discussed above, existence of a rule of the employer authorizing withholding/deduction of gratuity, if inconsistent with the scheme of the Act, would have no effect in view of section 14 of the Act.

44. For ascertaining the facts and circumstances in the backdrop whereof the Division Bench had decided Mining & Allied Machinery Corporation (supra), this Court also looked into the decision of the learned Single Judge which was under appeal before the said Division Bench viz. Ram Ranjan Mukherjee and Others Vs. Mining and Allied Machinery Corpn. Ltd., , There, the employee retired in pursuance of a Voluntary Retirement Scheme of the company. Paragraph 6(2) of the Scheme laid down that payment thereunder would be made after handing over of charges of the post including tools, materials, accessories and residential accommodation allotted by the company. One of the several questions formulated by the learned Judge for determination was: "whether Clause 6(2) of the VRS dated 26.5.1989 is ultra vires of the Payment of Gratuity Act, 1972."

The question was answered in the manner following:

5. ****There is a mandate of the Payment of Gratuity Act that gratuity is to be paid to the employee on his retirement or to his dependants in the event of his death. I am of the view that by introducing VRS the mandate of the Payment of Gratuity Act cannot be violated. Paragraph 6(2) of the VRS lays down that the payment under VRS shall be made after handling over all charges of the posts including tools, materials, accessories and residential accommodation by the Corporation. In my opinion the aforesaid paragraph 6(2) of VRS cannot be made available in respect of payment of gratuity under Payment of Gratuity Act, 1972 because if the said paragraph is made applicable in respect of payment of gratuity then it shall violate the mandate of the provisions of the Payment of Gratuity Act and cannot but be termed to be illegal in the nature.

45. It is clear from a bare perusal of the decision of the learned Single Judge as extracted above that gratuity was sought to be withheld not on invocation of any provision of rules framed by the employer but on the basis of a condition in its Voluntary Retirement Scheme. Payment of gratuity was not released because the

accommodation had not been vacated. The Scheme is also an instrument as referred to in section 14 of the Act. The impugned action was not found to be authorized in law by the learned Single Judge and the view was upheld by the Division Bench.

46. From whichever angle one looks at, the conclusion is inescapable that no deduction from gratuity could be made by the employer in such manner that is not consistent with the provisions of the Act. This Court is thus of the further considered view that the Division Bench decision of this Court in Mining & Allied Machinery Corporation (supra) is directly on the point and binding on this Court.

47. The decision in V.U. Warrier (supra) has also been considered. In that case, at the material time the respondent was drawing a pay that was more than the limit specified in the Act. The Apex Court, therefore, ruled that he was not an employee within the meaning of the Act. That apart, payment of gratuity was regulated by statutory rules. The law laid down therein thus would have no application so far as a decision on the issue with which this Court is concerned.

48. For reasons aforesaid, this Court is unable to accept that the decision in Sardar Sohan Singh (supra) lays down the law correctly. This Court also does not consider it necessary to refer the issue to a Division Bench since the issue has already been answered by binding decisions referred to above.

49. The first issue is accordingly answered in favour of the first respondents and against the company.

50. On perusal of the decisions given by the authorities under the Act which form the subject matter challenge herein, this Court for reasons aforesaid finds no reason to interfere therewith. The order of the Appellate Authority is confirmed. The writ petition stands dismissed. Since the Appellate Authority in its order declined to award interest to the first respondents for his failure to vacate the residential accommodation and such order has not been challenged by him, this Court is unable to order that the amount of gratuity should be released in favour of the first respondents with interest from the date of his retirement. However, the Controlling Authority is directed to release the amount of gratuity that has been deposited with it at the time of preferring appeal in favour of the first respondents as early as possible but not later than four weeks from date of receipt of a copy of this judgment.

51. Since the first respondents has not appeared in this proceedings, office is directed to forward a copy of this judgment to the Controlling Authority at the earliest for compliance.

52. There shall be no order as to costs.

53. Urgent photostat certified copy of this judgment, if applied for, be furnished to the applicant within 4 days from date of putting in requisites therefore.