

**THE HIGH COURT OF MADHYA PRADESH**

**W.A. No.1318/2018, W.A. No.1316/2018 &  
W.A. No.1317/2018**

**Jabalpur, Dated : 03.10.2018**

Mr. Ashish Shroti, Advocate for the appellants.

Mr. Anurag Gohil, Advocate for the respondents.

The argument of learned counsel for the appellants is based upon the definition of expression “pay” contained in Regulation 2(m) of the Madhyanchal Gramin Bank (Officers and Employees) Service Regulations, 2010 which means basic pay drawn per month by an officer or employee in a pay scale including stagnation increments and any part of the emoluments, which may specifically be classified as pay under these regulations. Whereas, the expression “salary” appearing in Regulation 2(o) mean aggregate of pay and dearness allowance.

It is argued that in terms of Regulation 72(3), in respect of an employee, for the purposes of gratuity, the dearness allowance, special allowances and officiating allowances are specifically included for the purposes of determining the amount of gratuity, but, in respect of the officers the gratuity is payable based on “last pay drawn” only. Therefore, there is classification in respect of quantification of gratuity to officers and employees separately. It is argued that there was no challenge to the legality of the classification; therefore, the legality of the classification should not be examined in the writ appeal.

We do not find that an issue, which is an issue of law, should not be examined only for the reason that same was not specifically challenged. Though the officers and employees form two distinct category but since the gratuity is a benefit given to retiring personnel, therefore, two different yardsticks for determination of the amount of gratuity i.e. separate for officers and employees doesn't seem to be *prima facie* justified.

Learned counsel for the appellants seeks some time to file additional affidavit to justify the classification in respect of quantification of the gratuity to the officers and the employees.

**List after six weeks.**

In the meantime, operation of the impugned order shall remain stayed.

**(Hemant Gupta)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**