

IN THE HIGH COURT OF MADHYA PRADESH, MAIN SEAT JABALPUR
CASE NO. : WA-1318-2018 (DISPOSED)

APPLICANT DETAILS:

Application No.: 14091 / 2019

Applicant Name: ANURAG GOHIL

Type: Express

Applied For: (1) Order of date 26-02-2019

PARTY DETAILS:

Petitioner	(1) MADHYANCHAL GRAMIN BANK, THROUGH ITS CHAIRMAN, R/o HEAD OFFICE AT PODDAR COLONY TILLI ROAD SAGAR, District- SAGAR (M.P.) (2) MADHYANCHAL GRAMIN BANK THR. ITS GENERAL MANAGER, R/o (ADMINISTRATION) HEAD OFFICE, District- SAGAR (M.P.)
Respondent	(1) ALL INDIA GRAMIN BANK PENSIONERS ORGANIZATION UNIT REWA, THROUGH ITS CHAIRMAN SHRI VISHAL KUMAR JAIN, R/o OFFICE AGNIHOTRI NIWAS BHAIRO MARG BICHHIYA DISTT. REWA, District- REWA (M.P.)

Advocates Details:

Petitioner Advocates	ASHISH SHROTI, VIKRAM JOHRI, AMIT NAGPAL, SOURABH KUMAR SONI
Respondent Advocates	ANURAG GOHIL, RUCHIKA GOHIL

LAST LISTED ON DETAILS:

Judge	HONBLE THE CHIEF JUSTICE and HONBLE SHRI JUSTICE VIJAY KUMAR SHUKLA	Date	26-02-2019
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LOWER COURT DETAILS:

Case Type	WP(+MP) WRIT PETITIONS-9182-2017	District	JABALPUR MAIN SEAT, HIGH COURT OF M.P.	Police Staion	Crime No.	0/0
Judge	---HON\\\\BLE SHRI JUSTICE SUJOY PAUL	Decision Date	06-09-2018			

EXTRA DETAILS:

Subject Heading/Category /Sub-Category	(1) LABOUR / INDUSTRY-14400 / Payment of Gratuity Act 1972-14417/-
Provision of law	WRIT APPEAL UNDER SECTION 2(1) OF MADHYA PRADESH UCHCHA NAYAYALAYA KHANDPEETH KOAPPEAL ADHINIYAM 2005
Act- U/Section	-
Brief Description of the Judgment/ Order/Award impugned	PETITION IS DISPOSED OFF
Des of Relief Claimed	TO SET ASIDE THE ORDER DT 06-09-2018 PASSED IN WP NO.9182/17

CERTIFICATE:

- 1 that I KEDAR SINGH (name) am employed as Head Copyist in the High Court of Madhya Pradesh, Main Seat Jabalpur.
- 2 that the High Court of M.P. is engaged in dispensation of Justice and various activities connected there to.
- 3 that by virtue of my employment as Head Copyist, I am authorized to use the computer system in High Court of Madhya Pradesh, Jabalpur.
- 4 that the computer terminals of the system used by me were functioning regularly to store or process information at all times.
- 5 that the contents of the certified copy are retrieved from my computer stored in High Court Server which was scanned through original records verified and digitally signed by the competent authority and certified by me.
- 6 that the above certificate, therefore, in the facts and circumstances of the case, is sufficient compliance of **Section 65B** of the Evidence Act. The above certified copies/ print outs as taken out from the computer, therefore, can be treated as certified copy.
- 7 Accordingly, I certify that the certified copy of the desired document annexed **(1) Order of date 26-02-2019** hereto is/are reproduced or is derived from the electronic record which was regularly fed into/transmitted through my computer terminal in High Court of Madhya Pradesh, Jabalpur, in the ordinary course of activities. During the activity the computer system utilized by me were operating properly and there is no distortion in the accuracy of the contents of the certified copy of the desired document.

Head Copyist



HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT**AT JABALPUR****W.A. No.1318/2018**

Madhyanchal Gramin Bank and another

Vs.

All India Gramin Bank Pensioners Organization Unit

W.A. No.1316/2018

Madhyanchal Gramin Bank and others

Vs.

Suresh Prasad Dwivedi and others

W.A. No.1317/2018

Madhyanchal Gramin Bank and another

Vs.

R. S. Sharma

Present:**Hon'ble Shri S. K. Seth, Chief Justice &
Hon'ble Shri Vijay Kumar Shukla, J.**

Shri V. S. Shrotri, Senior Advocate with Shri Dhruv Patel, Advocate for the appellants.

Shri Anurag Gohil, Advocate for the respondent No.1.

JUDGMENT**(26.02.2019)****Per: Shri Vijay Kumar Shukla, J.**

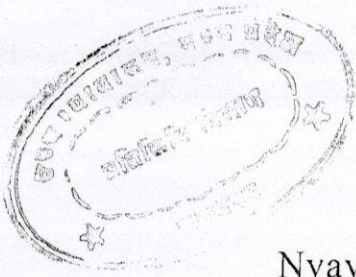
The *intra Court* appeals have been filed under

Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand

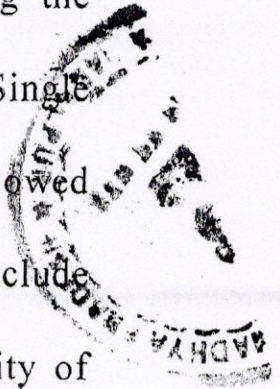
Date :- 28/02/2019

Verified By :- Niket Trivedi

Cite: Jabalpur, Madhya Pradesh



Nyaypeeth Ko Appeal) Adhiniyam, 2005 challenging the common order dated 6.9.2018 passed by learned Single Judge, whereby the writ petitions have been allowed directing the appellants/ respondents Bank to include Dearness Allowance (D.A.) and recalculate the gratuity of the petitioners and to pay the difference arising thereto to them within 60 days from the date of communication of the order. The learned Single Judge held that the respondents have erred in not including Dearness Allowance while calculating gratuity under the "Regulation".



2. In the present appeals, common questions are involved, therefore, they are being heard and disposed of analogously.
3. For the sake of of convenience pleadings and documents available in the record of W.A. No.1318/2018 are being referred in this order.
4. In the batch of these appeals, the issue is relating to interpretation of certain provisions of *Madhyanchal Gramin Bank (Officers and Employees) Service Regulation, 2010 & (Amendment) 2013* (for short the "**Regulation**").
5. The facts which are not in dispute are that the respondent/ All India Gramin Bank Pensioners Organization Unit, Rewa has filed the petition in representative capacity for ventilating the

grievance of the officers working in the Gramin Bank whereas in the other writ appeals, the respondents are retired officers of the Gramin Bank. The common grievance is that while calculating the gratuity as per the Regulation 72, the appellants herein have not taken into account the Dearness Allowance received by the respondents/ officers during their service.

6. In order to appreciate the issue involved in the present appeals, it is apposite to refer the definitions of “emoluments”, “pay” & “salary”. Regulation 72 is also relied upon by the parties. These provisions read as under :

“(i) “Emoluments” means the aggregate of salary and allowances, if any;

*** *** ***

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

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(o) “Salary” means aggregate of pay and dearness allowance;

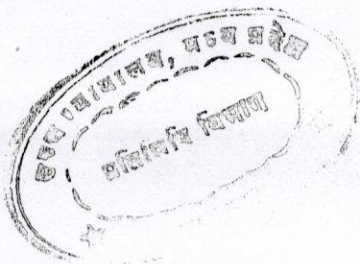
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72. **Gratuity.**- (1) An officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 (39 of 1972) or as per sub regulation (2), whichever is higher.

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

(a) retirement,

(b) death,



(c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank, or

(d) resignation after completing 10 years of continuous service, or

(e) termination of service in any other way except by way of punishment after completion of 10 years of service:

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

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

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

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

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

[Emphasis Supplied]

7. The senior Counsel for the appellants while assailing the order passed by the learned Single Judge submitted that the learned Single Judge has failed to interpret the Regulation 72(3)

Proviso II in proper perspective applying principles of interpretation of statutes and erred in holding that the definition of 'pay', 'emoluments' and 'salary' are deeply inter-linked and therefore 'last pay drawn' would include Dearness Allowance for the purposes of computation of gratuity. He vehemently argued that the proviso to sub section (3) of Regulation 72 refers 'Officers' and 'employee' treating them differently for the purpose of computation of gratuity. In the case of Officer as per second proviso the gratuity is payable on the basis of 'last pay drawn', whereas, in respect of an employee of the Bank pay for the purposes of calculation of gratuity shall be average of the basic pay (100%), Dearness allowance and special allowance and officiating allowance payable during the 12 months preceding death, disability, retirement, resignation or termination of service, as the case may be. He also refers regulation (3) of Chapter II of the Regulations that there is a classification of officers and employees and therefore, the language of Regulation 73 is unambiguous and unequivocal as dearness allowance is not part of 'basic pay' under Regulation 72(3) (Proviso II) and therefore, the same cannot be taken into account for the purpose of computation of gratuity in the case of officers. He further submitted that the principles of interpretation of statute which has been applied by the learned Single Judge applies only in the case where the words or language of the statute is ambiguous or

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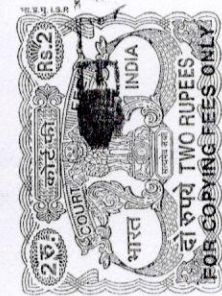
equivocal and those principles are applied only in order to avoid absurdity and impossibility. Further no words could have been added and conjoint meaning could not have been given where the language of the statute and the intention is plain and simple. In support of his arguments, learned Senior counsel referred to the judgment passed in the case of **Government of Andhra Pradesh and others Vs. Syed Yousuddin Ahmed – (1997)7 SCC 24; Union of India and another Vs. Deoki Nandan Aggarwal – 1992 Supp (1) SCC 323; Nathi Devi Vs. Radha Devi Gupta – (2005)2 SCC 271 and N.D. P. Namboodripad Vs. Union of India and others – (2007)4 SCC 502.**

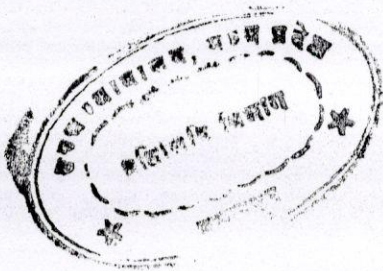
8. *Per Contra*, counsel for the respondents supported the order passed by the learned Single Judge and submitted that on conjoint reading of the definition of 'pay', 'emoluments' and 'salary', the 'last pay drawn' would include dearness allowance for the purpose of calculation of gratuity as held by learned Single Judge.

9. After having heard rival submissions of the parties, we do not find any merit in the present appeals. Chapter VII of regulation deals with the various provisions relating to provident fund, pension, gratuity, domicile, transferability, lending of services of an officer or employee to other organization, implementation of regulations and repeal and savings. The

Regulation 72 provides that an officer or employee shall be eligible for payment of gratuity either as per the provisions of the Payment of Gratuity Act, 1972 or as per sub regulation (2) whichever is higher. Officer or employee are eligible for gratuity on retirement, death, disablement, resignation after completing 10 years of the continued service or termination of service in any other way except by way of punishment after completion of 10 years of service. Sub section (3) provides the calculation of the amount of gratuity. The amount of gratuity payable to an officer or employee shall be one month's pay for every completed year of service or part thereof in excess of six months subject to a maximum of 15 month's pay. There is a proviso that an officer or employee who has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years. The second proviso states that in respect of an officer the gratuity is payable based on the last pay drawn. The "Pay" is defined under regulation 2(m) which means basic pay drawn per month by the officer or employee in a pay scale including stagnation increments and any part of the emoluments which may specifically be classified as pay under these regulations. Admittedly, no part of the emoluments has been specifically classified under the regulation as 'pay'. The 'emoluments' is defined under Regulation 2(i) means the

HIGH COURT





aggregate of salary and allowances, if any. 'Salary' is further defined under Regulation 2(o) means aggregate of pay and dearness allowance. Thus, the learned Single Judge has rightly held after referring to the definitions of 'emoluments', 'pay' and 'salary' that a conjoint reading of definitions of 'emoluments', 'pay' and 'salary', 'the last pay drawn' under regulation 2 proviso of sub regulation (3) of Regulation 72 would include dearness allowance for computation of gratuity in respect of officers as well.

10. The judgments referred above by the learned Senior Counsel in support of his contention would not render any assistance to contend that the intention of the Rule making authority is to treat the officers differently from the employees in view of the definitions of 'emoluments', 'pay' and 'salary' and further Regulation 72,.

11. In the case of **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others**, (1996) 3 SCC 52 , the Apex Court ruled that in an *intra-court* appeal the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

12. We do not find any illegality in the impugned order passed by the learned Single Bench warranting any interference in these *intra-court* appeals. Accordingly, the writ appeals deserve and are hereby dismissed. No order as to costs.

(S. K. SETH)
CHIEF JUSTICE

mrs. Mishra

(VIJAY KUMAR SHUKLA)
JUDGE

