Y.K. SINGLA

v.

PUNJAB NATIONAL BANK & ORS.

(Civil Appeal No. 9087 of 2012)

DECEMBER 14, 2012

[DR. B.S. CHAUHAN AND JAGDISH SINGH KHEHAR, JJ.]

Payment of Gratuity Act, 1972 – ss. 7 (3A), 4(5) and 14 – Withheld gratuity – Interest on – Entitlement – Criminal proceedings pending against Bank employee – In the meantime retirement of the employee on superannuation – Gratuity withheld – Subsequently acquittal of the employee – Gratuity released – Interest thereon granted from the date of the judgment of acquittal @ 5.5% – Employee's claim for the interest from the date of his retirement – Held: Interest on withheld gratuity is permissible u/s. 7(3A) – The Pension Regulations, 1995 which were adopted by the employer, whereby interest on account of delayed payment was debarred would be inconsequential – In view of ss. 4(5) and 14 benefit u/s. 7(3A) cannot be denied to an employee whose gratuity is regulated by some other instrument – Direction to pay the interest on gratuity when it became due to the employee on his retirement at the rate as provided u/s. 7(3A) – Punjab National Bank (Employees) Pension Regulations, 1995.

Criminal proceedings were initiated against the appellant alleging that at the relevant time when he was posted as a Manager with the respondent-Bank, he entered into a conspiracy with the Regional manager of the Bank and an officer of Indian Administrative Service, which caused pecuniary loss to the Bank. In the meantime, the accused retired on 31.10.1996 attaining the age of superannuation. On account of pendency of the criminal case, his gratuity, leave encashment and commutation of permissible portion of pension were

A withheld. The appellant was informed that eventual release of the retiral benefits would depend on the outcome of the pending criminal case. On 31.10.2009, the accused was acquitted in the criminal proceedings. On the basis of acquittal, the appellant sought for the retiral B benefits with interest from the date they became due to him (i.e. from the date of his retirement) till the actual payment. The Bank released the retiral benefits with interest on the Leave Encashment and Gratuity amount from the date on which he was acquitted in the criminal C proceedings i.e. on 31.10.2009 at the rate of 5.5.%.

The appellant filed writ petition. The High Court allowing the petition, directed the Bank to pay the appellant interest at the rate of 8% from the date the retiral benefits become due to him till the actual payment D thereof. Writ appeal was partly allowed by Division Bench of High Court holding that the appellant was not entitled to any interest on delayed payment of Gratuity in view of Regulation 46 of Punjab National Bank (Employees) Pension Regulations, 1995. Hence the present appeal.

E Disposing of the appeal, the Court

HELD: 1. Sub-Section (3A) of Section 7 of the Gratuity Act provides that in case gratuity is not released to an employee within 30 days from the date the same becomes F payable under sub-Section (3) of Section 7, the employee in question would be entitled to "...simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term loans, as the Government may, by notification specify..." There is, however, one exception to the payment of G interest envisaged under sub-Section (3A) of Section 7 of the Gratuity Act, provided for in the proviso under sub-Section (3A). The said proviso reveals, that no interest would be payable "...if the delay in the payment is due to the fault of the employee, and the employer has H obtained permission in writing from the controlling

authority for the delayed payment on this ground...". The second ingredient expressed in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act was clearly satisfied, when the competent authority approved the action of withholding the appellant's gratuity. The communication dated 13.5.2000, by which his gratuity was withheld, had been issued at the instance of the concerned controlling authority. Consequent upon the acquittal of the appellant, it would be erroneous to conclude, that the gratuity payable to the appellant on attaining the age of superannuation was withheld on account of some fault of the appellant himself. Accordingly it emerges, that the "fault" ingredient of the employee himself, for denial of gratuity when it became due, remains unsubstantiated. Since one of the two salient ingredients of the proviso under sub-Section (3A) of Section 7 is clearly not satisfied, the appellant cannot be denied interest under the proviso to section 7(3A). Accordingly, the appellant has to be awarded interest under section 7(3A). [Paras 17 and 18] [1207-A-E; 1208-C-D-F-G; 1209-A-B]

2. Even though the Punjab National Bank (Employees) Pension Regulations, 1995 are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3A) of the Gratuity Act. Under Section 4(5) of the Gratuity Act, an employee has the right to make a choice of being governed by some alternative provision/instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-

A **à-vis, any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the**
B **Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument"**
C **and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant. Even if the provisions of the 1995 Regulations, had debarred payment of interest on**
D **account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under section 7(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some**
E **provision/instrument other than the Gratuity Act. [Paras 20 and 21] [1210-G-H; 1211-A-F; 1212-A]**

3. The Bank is directed to pay to the appellant, interest at "...the rate notified by the Central Government for repayment of long term deposits..." as provided u/s.
F **7 (3A) of Payment of Gratuity Act. In case no such notification has been issued, the appellant would be entitled to interest, as was awarded to him by the Single Judge of the High Court i.e. interest at the rate of 8%. [Para 21] [1212-D-E]**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9087 of 2012.

From the Judgment & Order dated 29.11.2011 of the High Court of Punjab and Haryana at Chandigarh in Letters Patent Appeal No. 1950 of 2011.

H

Sudhir Chandra Agarwala, Jitender Vohra, Rameshwar Prasad Goyal for the Appellant. A

Yashraj Singh Deora, Rajesh Kumar, Anupama Dhurve, Prashant Narang, Sarv Mitter (for Mitter & Mitter Co.) for the Respondents. B

The Order of the Court was delivered by

JAGDISH SINGH KEHAR, J. 1. Leave granted.

2. The appellant was inducted into the service of the Punjab National Bank (hereinafter referred to as, the PNB) in the clerical cadre on 19.2.1958. He was successively promoted against the posts of Special Assistant and Accountant with effect from 23.8.1972 and 26.12.1974. He also gained further promotions to the cadres of Manager-B Grade and thereafter, Manager-A Grade with effect from 24.11.1977 and 18.12.1982 respectively. He finally came to be promoted to the post of Chief Manager with effect from 1.10.1986. Whilst holding the post of Chief Manager, the appellant retired from service, on attaining the age of superannuation on 31.10.1996. C D

3. During 1981-1982, when the appellant was posted as Manager at the Sector 19, Chandigarh Branch of the PNB, he was accused of having entered into a conspiracy with R.L. Vaid, the then Regional Manager of the PNB, Chandigarh, and Dr. A.K. Sinha, IAS, the then Secretary, Department of Town and Country Planning, Haryana and thereby, of fraudulently having sanctioned a loan of Rs.2,70,000/- to Mrs. Rama Sinha (wife of Dr. A.K. Sinha, aforementioned). The said loan was granted to Mrs.Rama Sinha, for construction of a building on a plot in Sector 6, Panchkula. The said building, after its construction, was leased to the PNB, at an allegedly exorbitant rent of Rs.4,985/- per month. The loan amount, was to be adjusted out of the rent account. The PNB was allegedly, not in the need of the said building, because it was already housed in a building in Sector 17, Chandigarh, at a nominal rent of Rs.1,650/- per month. The building rented from Mrs. Rama E F G H

A Sinha was said to have remained unoccupied from 1.5.1982 to 21.1.1987. This factual position, it was alleged, was sufficient to infer, that the PNB was not in need of the building taken on rent from Mrs.Rama Sinha. Based on the aforesaid factual position, it was felt, that the action of the conspirators B caused a pecuniary loss of Rs.2,70,000/- to the PNB. It was also sought to be assumed, that the aforesaid loan and lease were favours extended to Dr. A.K. Sinha, IAS, through his wife Mrs. Rama Sinha. Based on the aforesaid allegations, the appellant Y.K. Singla, the aforesaid R.L. Vaid and Dr. A.K. C Sinha, IAS, were charged under Section 120B of the Indian Penal Code and Section 5(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

4. The trial in the above matter was conducted by the Special Judge, CBI Court, Chandigarh. On the conclusion of D the trial, the Special Judge, CBI Court, Chandigarh arrived at the conclusion, that the prosecution had failed to produce any evidence on the issue of criminal conspiracy. The trial Court accordingly, acquitted all the three accused of the charges framed against them on 31.10.2009, by holding, that the E prosecution had failed to establish the charges beyond a shadow of reasonable doubt.

5. During the subsistence of the aforesaid criminal proceedings, the appellant Y.K. Singla retired from the employment of the PNB, on having attained the age of F superannuation, on 31.10.1996. On his retirement, on account of the pendency of the criminal proceedings being conducted against him, gratuity, leave encashment and commutation of permissible portion of pension, were withheld. While withholding the aforesaid monetary benefits, the appellant was G informed by the PNB through a communication dated 13.5.2000, that the eventual release of the aforesaid retiral benefits, would depend on the outcome of the pending criminal proceedings.

H 6. As already noticed above, the appellant was acquitted

of the charges framed against him, by the Special Judge, CBI Court, Chandigarh, on 31.10.2009. Based on his aforesaid acquittal, the appellant addressed a letter dated 26.11.2009 to the Executive Director of the PNB seeking release of his gratuity, encashment of privileged leave balance and commutation of permissible portion of pension. Additionally, he claimed interest, from the date the aforesaid retiral benefits became due to him, till the actual payment thereof. It will also be relevant to mention, that by this time, the appellant was over 73 years old. In its reply dated 5.2.2010, the PNB informed the appellant, that it had released leave encashment of Rs.1,28,716.24 on that day itself i.e., on 5.2.2010 itself. The appellant was also informed through the aforesaid communication, that a duly sanctioned gratuity proposal had been sent to the Provident Fund and Pension Department of the PNB, for disbursement of gratuity. Thereupon, the appellant actually received the gratuity payable to him, on 12.2.2010.

7. Having received encashment of privileged leave balance, as also, gratuity in February, 2010, the appellant reiterated his claim for interest, on account of delayed payment of the aforesaid amounts, through another letter dated 17.2.2010. In the instant letter, the appellant pointed out, that he had retired on attaining the age of superannuation on 31.10.1996, and as such, the PNB had withheld the aforesaid monetary benefits due to him for a period of more than 13 years up to February, 2010. The appellant's request for interest on the aforesaid delayed payments, was responded to by the PNB through a letter dated 12.3.2010. The appellant was informed, that he was entitled to interest on account of withholding of his retiral benefits, only with effect from the date of culmination of the proceedings pending against him. Having found the appellant entitled to interest with effect from 31.10.2009 i.e., when the Special Judge, CBI Court, Chandigarh acquitted him, the PNB released a sum of Rs.1,881/- as interest towards delayed payment of leave encashment, and another sum of Rs.3,336/- as interest on account of having withheld his gratuity.

A The aforesaid interest, the appellant was informed, had been calculated at the rate of 5.5%.

8. Dissatisfied with the action of the PNB, in not paying interest to him from the date the aforesaid retiral benefits became due (on his retirement on 31.10.1996), till their eventual B release (in February, 2010), the appellant filed Civil Writ Petition no. 6469 of 2010 before the High Court of Punjab & Haryana at Chandigarh (hereinafter referred to as, the High Court). The aforesaid Writ Petition came to be allowed on 4.5.2011. While allowing the Writ Petition filed by the appellant, C the High Court directed the PNB to pay the appellant, interest at the rate of 8% from the date retiral benefits had became due to the appellant, till the actual payment thereof to him.

9. Dissatisfied with the order dated 4.5.2011, passed by the learned Single Judge of the High Court, the PNB preferred D Letters Patent Appeal no. 1950 of 2011. The Letters Patent Appeal filed by the PNB was partly allowed by a Division Bench of the High Court, on 29.11.2011. The Division Bench of the High Court arrived at the conclusion, that the appellant was not entitled to any interest on delayed payment of Gratuity. E The award of interest to the appellant for withholding the other retiral benefits was, however, not interfered with. The decision (dated 29.11.2011) rendered by the Division Bench of the High Court, has been assailed by the appellant, through the instant appeal.

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10. The reasons which prompted the Division Bench of the High Court to deny interest on the withheld amount of gratuity to the appellant, are ascertainable from the paragraph 7 of the impugned order, which is being extracted hereunder:-

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"7. On having considered the matter, we are in agreement with the submission made by the learned counsel appearing for the appellant-Bank insofar as withholding of gratuity is concerned. The language of the relevant Rule i.e. Rule 46 of the 1995 Rules is clear and unambiguous. H The mandate of the Rule is such that it operates as a bar

insofar as the Bank is concerned, as regards the release of gratuity to an employee against whom the departmental or judicial proceedings were pending on the date such employee attains the age of superannuation. The Rule stipulates that such withheld amount of gratuity would become payable only upon conclusion of the proceedings. Admittedly, judicial proceedings were pending against the respondent on the date of his superannuation i.e. 31.10.1996 and concluded only upon his acquittal vide order dated 31.10.2009. The amount viz. gratuity has since been released on 13.2.2010 and interest thereupon has also been paid for the period 31.10.2009 till the date of payment. We, accordingly, hold that respondent no. 1 is not entitled to any interest for the period 31.10.1996 till the conclusion of the trial and his acquittal i.e. 31.10.2009 on the withheld amount of gratuity."

11. It is apparent from a perusal of the reasoning recorded by the High Court, that the High Court relied upon Regulation 46 of the Punjab National Bank (Employees) Pension Regulations, 1995 (hereinafter referred to as, the 1995 Regulations). Regulation 46 is being extracted hereunder:-

"46. **Provisional Pension**

(1) An employee who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued, a provisional pension, equal to the maximum pension which would have been admissible to him, would be allowed subject to adjustment against final retirement benefits sanctioned to him, upon conclusion of the proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld etc. either permanently or for a specified

A period.

(2) In such cases the gratuity shall not be paid to such an employee until the conclusion of the proceedings against him. The gratuity shall be paid to him on conclusion of the proceedings subject to the decision of the proceedings. Any recoveries to be made from an employee shall be adjusted against the amount of gratuity payable."

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(emphasis is ours)

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Having perused Regulation 46(2), we are of the view, that the High Court was fully justified in concluding, that it was open to the PNB not to pay to the appellant gratuity, till the culmination of the proceedings pending against him. It is, therefore, D apparent, that non-release of gratuity to the appellant after 31.10.1996 (when the appellant retired from his employment, with the PNB), till his acquittal by the Special Judge, CBI Court, Chandigarh, on 31.10.2009, cannot be faulted.

12. The right to withhold gratuity, is an issue separate and E distinct, from the claim of interest, which has been raised by the appellant. The question that arises for consideration is, whether an employee whose gratuity has been withheld under Regulation 46(2) of the 1995 Regulations, would he be entitled to interest on the withheld payment of gratuity, if he is found not F to be at fault? According to the simple logic of the appellant, since his gratuity was withheld from 1996 (when he retired from service) till 2010 (when gratuity was eventually released to him), i.e., for a period of 14 years, for no fault of his, he is most definitely entitled to interest on the delayed payment. It is, G however, not the simple logic of the appellant, which will determine the controversy in hand. For, logic gave rise to diametrically opposite views, one of which was expressed by the Writ Court, and the other by the Letters Patent Bench. We shall therefore endeavour to search for a legal answer, to the H issue in hand.

13. The 1995, Regulations, are silent on the subject of an employee's rights whose gratuity has been withheld, even in circumstances where it has eventually been concluded, that he was not at fault. This is exactly the situation in the present controversy, inasmuch as, the appellant's retiral benefits including gratuity, were withheld on 31.10.1996 when he retired on attaining the age of superannuation. The aforesaid withholding, was on account of a pending criminal proceeding. The said withholding has appropriately been considered as valid, under Regulation 46(2) of the 1995, Regulation. But the appellant was acquitted from the criminal prosecution initiated against him on 31.10.2009. As such, it is inevitable to conclude, that his gratuity was withheld without the appellant being at fault. It is in the aforesaid background, that we shall venture to determine the claim of the appellant for interest, despite the PNB having validly withheld his gratuity under Regulation 46(2) of the 1995, Regulations.

14. Insofar as the issue in hand is concerned, reference needs to be made to certain provisions of the Payment of Gratuity Act, 1972 (hereinafter referred to as, the Gratuity Act). In our considered view, Sections 4, 7 and 14 of the Gratuity Act are relevant. Section 4 is being extracted hereunder:-

"4. **Payment of gratuity -**

(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service

A of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the B employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such C bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation - For the purposes of this section, disablement means such disablement as D incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof E in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated F employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall G not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the H employer shall pay the gratuity at the rate of seven

days' wages for each season. A

Explanation.— In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen. B

(3) The amount of gratuity payable to an employee shall not exceed one lakh rupees.

(4) For the purpose of computing the gratuity payable C to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his D disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee receive better terms of gratuity under any award or agreement or contract with the employer. E

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

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

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

(i) if the services of such employee have been H

A terminated for his riotous or disorderly conduct or any other act 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 offence is committed by him in the course of his employment."

(emphasis is ours)

C It is not a matter of dispute, that the appellant was entitled to gratuity when he retired on attaining the age of superannuation on 31.10.1996. The quantification of the appellant's gratuity by the PNB is not in dispute. As such, sub-sections (1) to (4) of D section 4 of the Gratuity Act are clearly not relevant to the present controversy. Only sub-section (5) of section 4 is relevant in so far as the present case is concerned. Likewise, since the appellant has not been found to be at any fault, sub-section (6) of section 4 is also not attracted in this case.

E 15. Sub-Section (5) of section 4 of the Gratuity Act permits an employee to be regulated for purpose of gratuity, under an alternative provision/arrangement (award or agreement or contract), other than the Gratuity Act. In such an eventuality, sub-section (5) aforesaid, assures the concerned employee, "...to F receive better terms of gratuity under any award or agreement or contract with the employer..." Since the appellant's claim for gratuity is regulated, under the 1995, Regulations, it is evident, that his claim for gratuity is liable to be determined by ensuring his right to better terms than those contemplated under G the Gratuity Act. In the instant process of consideration, the aforesaid conclusion, namely, that an employee who receives gratuity under a provision, other than the Gratuity Act, would be entitled to better terms of gratuity, will constitute one of the foundational basis, of determination. Having examined section H 4 of the Gratuity Act, we may unhesitatingly record, that none

of the other sub-sections of section 4 of the Gratuity Act, as well as, the other provisions of the Gratuity Act, have the effect of negating the conclusion drawn hereinabove.

16. For the determination of the present controversy, it is also relevant to take into consideration Section 7 of the Gratuity Act, which is being extracted hereunder:-

"7. **Determination of the amount of gratuity.-**

(1) A person who is eligible for payment of gratuity under this Act or any person authorized, in writing, to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.

(2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

(3) The employee shall arrange to pay the amount of gratuity, within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) <u>If the amount of gratuity payable under sub-Section (3) is not paid by the employer within the period specified in sub-Section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify</u>:

A Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

B (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 C 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 D 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.

(c) The controlling authority shall, after due inquiry and E after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to F pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited including the excess amount, if any, G deposited by the employer, to the person entitled thereto.

(d) as soon as may be after a deposit is made under clause (a), the controlling authority shall pay the H amount of the deposit-

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908, (5 of 1908) in respect of the following matters, namely:-

(a) enforcing the attendance of any person or examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) issuing commission for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).

(7) Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as

A may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it B is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days:

Provided further that no appeal by an employer shall C be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited D under sub-Section (4), or deposits with the appellate authority such amount.

(8) The appropriate Government or the appellate authority, as the case may be, may, after giving the E parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority."

(emphasis is ours)

F A perusal of sub-Section (2) of Section 7 reveals, that it is the onerous responsibility of the employer, to determine the amount of gratuity payable to a retiring employee. Sub-Section (3) of Section 7 enjoins a further responsibility on the employer, to disburse the amount of gratuity payable to an employee, G within 30 days from the date it becomes payable. Since the appellant had attained the age of superannuation on 31.10.1996, it is apparent, that gratuity had become payable to him on 31.10.1996. Accordingly, the same ought to have been calculated in terms of sub-Section (2) of Section 7 of the

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Gratuity Act, and should have been dispersed to the appellant by 30.11.1996 in terms of sub-Section (3) of Section 7 of the Gratuity Act. A

17. Sub-Section (3A) of Section 7 of the Gratuity Act is the most relevant provision for the determination of the present controversy. A perusal of the sub-Section (3A) leaves no room for any doubt, that in case gratuity is not released to an employee within 30 days from the date the same become payable under sub-Section (3) of Section 7, the employee in question would be entitled to "...simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long term loans, as the Government may, by notification specify..." There is, however, one exception to the payment of interest envisaged under sub-Section (3) of Section 7 of the Gratuity Act. The aforesaid exception is provided for in the proviso under sub-Section (3A) of Section 7. A perusal of the said proviso reveals, that no interest would be payable "...if the delay in the payment is due to the fault of the employee, and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground..." The exception contemplated in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, incorporates two ingredients. Where the two ingredients contemplated in the proviso under sub-Section (3A) are fulfilled, the concerned employee can be denied interest despite delayed payment of gratuity. Having carefully examined the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, we are of the view, that the first ingredient is, that payment of gratuity to the employee was delayed because of some fault of the employee himself. The second ingredient is, that the controlling authority should have approved, such withholding of gratuity (of the concerned employee) on the basis of the alleged fault of the employee himself. None of the other sub-sections of Section 7 of the Gratuity Act, would have the effect of negating the conclusion drawn hereinabove. B C D E F G H

A 18. Insofar as the present controversy is concerned, the appellant was accused of having entered into a conspiracy with a bank employee superior to him, so as to extend unauthorized benefits to a member of the Indian Administrative Services belonging to the Haryana Cadre. Based on the aforesaid B alleged fault of the appellant, the PNB, by an order dated 13.5.2000, informed the appellant, that the release of certain retiral benefits including gratuity was being withheld, because of pending of criminal proceedings against him. The appellant was also informed, through the aforesaid communication, that C release of his retiral benefits including gratuity, would depend on the outcome of the pending criminal proceedings. It is, therefore apparent, that the second ingredient expressed in the proviso under sub-Section (3A) of Section 7 of the Gratuity Act was clearly satisfied, when the competent authority approved D the action of withholding the appellant's gratuity. The instant conclusion is inevitable, because it is not the case of the appellant, that the communication dated 13.5.2000, by which his gratuity was withheld, had not been issued at the instance of the concerned controlling authority. The only question which, therefore, arises for consideration is, whether the first E ingredient (culled out above) for the applicability, of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act, can be stated to have been satisfied, in the facts and circumstances of the instant case. If it can be concluded, that the aforesaid ingredient is also satisfied, the appellant would have no right F to claim interest, despite delayed release of gratuity. Our determination of the first ingredient is, as follows. We are of the considered view, that consequent upon the acquittal of the appellant by the Special Judge, CBI Court, Chandigarh, it would be erroneous to conclude, that the gratuity payable to the G appellant on attaining the age of superannuation i.e., on 31.10.1996, was withheld on account of some fault of the appellant himself. We may hasten to add, if the appellant had been convicted by the Special Judge, CBI Court, Chandigarh, then the first ingredient would also be deemed to have been H satisfied. Conversely, because the appellant has been

acquitted, he cannot be held to be at fault. Accordingly it emerges, that the "fault" ingredient of the employee himself, for denial of gratuity when it became due, remains unsubstantiated. Since one of the two salient ingredients of the proviso under sub-Section (3A) of Section 7 of the Gratuity Act is clearly not satisfied in the present case, we are of the view, that the appellant cannot be denied interest under the proviso to section 7(3A) of the Gratuity Act. Accordingly, the appellant has to be awarded interest under section 7(3A) of the Gratuity Act. Therefore, if the provisions of the Gratuity Act are applicable to the appellant, he would most definitely be entitled to interest under sub-Section (3A) of Section 7 of the Gratuity Act, on account of delayed payment of gratuity.

19. The most important question which arises for our consideration is, whether the provisions of the Gratuity Act can be extended to the appellant, so as to award him interest under sub-Section (3A) of Section 7 of the Gratuity Act. Insofar as the instant aspect of the matter is concerned, it was the vehement contention of the learned counsel appearing on behalf of the appellant, that the provisions of the Gratuity Act are extendable to the appellant, and as such, he would be entitled to disbursement of interest under Section 7(3A) thereof. The plea at the behest of the PNB, however, was to the contrary. The contention of the learned counsel representing the PNB was, that the PNB having adopted the 1995, Regulations, the claim of the appellant could only be determined under the provisions of the said Regulations. It was pointed out, that denial of payment of gratuity in the present case, was valid and justified under Regulation 46(2) of the 1995 Regulations. Furthermore, it was pointed out, that the 1995 Regulations, did not make any provision for the award of interest in case of delayed payment of gratuity. Therefore, since gratuity had legitimately been withheld, under the provisions of the 1995, Regulations, and the payment of gratuity to the appellant is not regulated under the Gratuity Act, there was no question of payment of interest to the appellant. It was submitted that the

A appellant's gratuity had been withheld during the pendency of criminal proceedings initiated against him, his entitlement to gratuity stood extended to such time as the said criminal proceedings were eventually disposed of. Thus viewed, the entitlement to gratuity stood extended to 31.10.2009 (i.e., the B date of the disposal of the proceedings pending against him). In this behalf, it was also pointed out, that as soon as the criminal proceedings pending against the appellant, concluded in his favour, the PNB released all the appellant's retiral benefits, including gratuity. The documents available on the C record of the case reveal, that gratuity was released to the appellant on 12.2.2010. As such, the delay in release of gratuity, if at all, was only from 31.10.2009 to 12.2.2010. For the aforesaid delayed payment of gratuity, the appellant was admittedly awarded interest quantified at Rs.3,336/- (calculated D at the rate of 5.5%).

20. In order to determine which of the two provisions (the Gratuity Act, or the 1995, Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted E hereunder:-

> "**14. Act to override other enactments, etc.** – The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith F 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."
>
> (emphasis is ours)

G A perusal of Section 14 leaves no room for any doubt, that a superior status has been vested in the provisions of the Gratuity Act, vis-à-vis, any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it H is apparent that in cases where gratuity of an employee is not

regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term "instrument" and the phrase "instrument or contract having the force of law" shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant. A B

21. Based on the conclusions drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act, that an employee has the right to make a choice of being governed by some alternative provision/instrument, other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the concerned employee would be entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4 (5) of the Gratuity Act. Furthermore, from the mandate of Section 14 of the Gratuity Act, it is imperative to further conclude, that the provisions of the Gratuity Act would have overriding effect, with reference to any inconsistency therewith in any other provision or instrument. Thus viewed, even if the provisions of the 1995, Regulations, had debarred payment of interest on account of delayed payment of gratuity, the same would have been inconsequential. The benefit of interest enuring to an employee, as has been contemplated under section 7(3A) of the Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/ instrument other than the Gratuity Act. This is so because, the terms of payment of gratuity under the alternative instrument has to ensure better terms, than the ones provided under the Gratuity Act. The effect would be the same, when the concerned provision is silent on the issue. This is so, because the instant situation is not worse than the one discussed above, where C D E F G H

A there is a provision expressly debarring payment of interest in the manner contemplated under Section 7(3A) of the Gratuity Act. Therefore, even though the 1995, Regulations, are silent on the issue of payment of interest, the appellant would still be entitled to the benefit of Section 7(3A) of the Gratuity Act. If B such benefit is not extended to the appellant, the protection contemplated under section 4(5) of the Gratuity Act would stand defeated. Likewise, even the mandate contained in section 14 of the Gratuity Act, deliberated in detail hereinabove, would stand negated. We, therefore, have no hesitation in concluding, C that even though the provisions of the 1995, Regulations, are silent on the issue of payment of interest, the least that the appellant would be entitled to, are terms equal to the benefits envisaged under the Gratuity Act. Under the Gratuity Act, the appellant would be entitled to interest, on account of delayed D payment of gratuity (as has already been concluded above). We therefore hold, that the appellant herein is entitled to interest on account of delayed payment, in consonance with sub-Section (3A) of Section 7 of the Gratuity Act. We, accordingly, direct the PNB to pay to the appellant, interest at "...the rate notified by the Central Government for repayment of long term E deposits...". In case no such notification has been issued, we are of the view, that the appellant would be entitled to interest, as was awarded to him by the learned Single Judge of the High Court vide order dated 4.5.2011, i.e., interest at the rate of 8%. The PNB is directed, to pay the aforesaid interest to the F appellant, within one month of the appellant's furnishing to the PNB a certified copy of the instant order. The appellant shall also be entitled to costs quantified at Rs.50,000/-, for having had to incur expenses before the Writ Court, before the Division Bench, and finally before this Court. The aforesaid costs shall G also be disbursed to the appellant within the time indicated hereinabove.

22. Disposed of in the aforesaid terms.

H K.K.T. Appeal disposed of.