

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

**HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VIVEK JAIN**

WRIT APPEAL No. 563 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS***

WRIT APPEAL No. 564 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS***

WRIT APPEAL No. 565 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS***

WRIT APPEAL No. 566 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS***

WRIT APPEAL No. 567 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
STATE OF M.P. AND OTHERS***

WRIT APPEAL No. 568 of 2023

***LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS***

WRIT APPEAL No. 569 of 2023

LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL No. 570 of 2023

LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
STATE OF M.P. AND OTHERS

WRIT APPEAL No. 571 of 2023

LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

WRIT APPEAL No. 572 of 2023

LITTLE WORLD HIGHER SECONDARY SCHOOL
Versus
STATE OF M.P. AND OTHERS

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Appearance:

Shri Kishore Shrivastava - Senior Advocate & Shri Sanjay Ram Tamrakar - Senior Advocate with Shri Ankit Chopra and Shri Raman Choubey - Advocate for appellant.

Shri B.D. Singh - Government Advocate for respondents/State.

Shri Aditya Ahiwasi - Advocate for respondent No.3.

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J U D G M E N T

(Reserved on	:	04/04/2025)
(Pronounced on	:	15/04/2025)

Per: Hon'ble Shri Justice Vivek Jain.

Regard being had to the similitude of controversy involved in the matter and the legal issue involved in the matter which is common to all the

appeals, the same are being heard and decided by this common order. For the sake of convenience, facts are taken from W.A. No. 563/2023.

2. Challenge in the appeals is made to order dated 08.02.2023 passed in W.P. No. 28821/2021 and batch of matters whereby the learned single Judge of this Court has upheld the order passed by the Controlling Authority under the Payment of Gratuity Act, 1972 (for short hereinafter referred as “Act of 1972”) dated 11.10.2021 whereby the Controlling Authority-cum- Assistant Labour Commissioner Jabalpur had directed the appellant employer to make payment of amount of gratuity along with interest @ 10% per annum.

3. The undisputed facts of the case are that the respondent No. 3 employee was working as teacher in the appellant institution and that the employee worked from the period 08.06.2001 till 01.07.2011 in the appellant institution as teacher. However, despite having rendered more than 5 years of qualifying service she was not made payment of gratuity and therefore, she filed an application under Section 7(4) of the Act of 1972 before the Controlling Authority seeking payment of gratuity under Payment of Gratuity Act 1972. The said application has been allowed by the Controlling Authority vide order dated 07.10.2021 directing the appellant school to make payment of gratuity to the respondent No. 3 to the tune on Rs. 1,09,385/- along with interest @ 10% per annum from the date of exit from the employment till its realization.

4. The learned Senior Counsel for the appellant had vehemently argued that the application before the Controlling Authority was not maintainable and that the learned Single Judge has gravely erred in law in ignoring the fact that the application before the Controlling Authority was not maintainable for the grounds raised by him and being discussed by us hereinbelow.

5. Firstly, it is argued that the respondent No. 3 employee is not entitled to payment of gratuity in terms of judgment of the Hon'ble Supreme Court in the case of **Ahmedabad Pvt. Primary Teachers' Assn. Vs. Administrative Officer, (2004) 1 SCC 755** because in terms of the said judgment the respondent No. 3 would not fall to be covered under the Gratuity Act. However, during the course of the arguments, the learned senior counsel for the appellant has fairly admitted that after amendment in the Act of 1972 as amended by Amending Act 47 of 2009, a teacher is covered within the definition of employee in terms of Section 2(e) of Act of 1972 and that the law in this regard has been conclusively settled by the Hon'ble Supreme Court in the case of **Birla Institute of Technology Vs. State of Jharkhand, (2019) 4 SCC 513**. Therefore, we need not dilate further on this aspect because though the ground was formally raised, but the legal position has been fairly conceded by the learned senior counsel for the appellant.

6. Learned senior counsel for the appellant has further argued that looking to the scheme of Payment of Gratuity Act so also the payment of Gratuity (Madhya Pradesh) Rules 1973 (for short M.P. Rules), claim for gratuity has to be made in a proper form firstly before the employer in terms of the rules 7(1) which has to be read along with Section 7(1) of the Act of 1972. It is argued that the M.P. Rules more specifically in Rule 7(1) provide for a limitation period of 30 days from the date gratuity becomes payable and this request has to be made from the employer. The learned senior counsel argued that in the present case admittedly no request in terms of the M.P. Rules was made to the employee before approaching the Controlling Authority and therefore, without approach being made to the employer, the application could not have been entertained by the Controlling Authority and therefore, the application before the Controlling Authority was clearly not maintainable.

7. In the second limb of argument the learned senior counsel for the appellant contends that as per Rule 7(1) of M.P. Rules, limitation is prescribed and as per Rule 7(5) there is a provision for condonation of delay and for that the employee has to show sufficient cause for the delay caused in preferring his claim and any dispute in this regard shall be referred to the Controlling Authority for its decision. It is contended that no application for condonation of delay was preferred by the employee before the Controlling Officer even if the application directly before the Controlling Authority is held to be maintainable, and hence, the application was hit by limitation.

8. In the third limb of his submissions, the learned senior counsel has argued that even though the Act of 1972 does not provide for any limitation to prefer a claim for gratuity but Section 7(1) provides for application to be filed before the employer and Section 7(2) though provides for obligation on the employer to pay gratuity but once employer does not discharge the obligation, then, the remedy is provided under Rules and that remedy contains specific limitation period. Therefore, the scheme of the Act and the Rules is different. One (i.e. Act of 1972) provides for substantive right accruing to the employee and obligation on the employer and secondly, the scheme of M.P. Rules provides for remedy and therefore, limitation being carved out in the remedy provided in the M.P. Rules does not conflict with the substantive Act and therefore, the application of the respondent No.3 preferred before the Controlling Authority in the year 2020 which is almost 9 years after her exit from the employment could not have been entertained by the Controlling Authority in any manner. Therefore, on the aforesaid submissions it is prayed to allow the appeals and set-aside the orders of the Controlling Authority as well as the learned Single Judge.

9. *Per contra*, the learned counsel for the respondent No. 3 employee submits that as per Section 7(2) of the Act of 1972 there are specific

provisions that Gratuity shall be paid as soon as the same becomes payable irrespective of the application to be preferred by the employee under Section 7(1). It is further argued that the substantive Act of 1972 does not provides for any limitation period for making an application before the employer or before the Controlling Authority and therefore, the M.P. Rules which provides for limitation to file an application for gratuity directly conflict with the Act of 1972 and further that the M.P. Rules were framed in the year 1973 prior to amendment in the Payment of Gratuity Act which took place in the year 1987 whereby Rule 3 was substituted and Rule 3(A) was inserted in the Act of 1972 but the State Government has omitted to amend the Rules in accordance with the amended Act of 1972 and therefore, the rules providing for limitation period for raising the claim have to be read in this perspective of amendment in the Act of 1972.

10. Learned counsel for the respondent further relied on judgment of Single Bench of this Court in the case of **M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. v. D.D. Singh, 2014 (3) MPLJ 641** so also of the Division Bench of this Court in the case of **Mohanlal v. Appellate Authority under Payment of Gratuity Act, 1991 MPLJ 355** and of another Division Bench of this Court in the case of **L.S.Patel Vs. M.P. State cooperative Dairy Federation reported in 2020(1) LLJ 342**.

11. Heard.

12. The parties have vehemently argued for and against non-maintainability of application before the Controlling Authority without first making an application before the employer. Heavy reliance was placed on Section 7(1) of Act of 1972 as well as on Rule 7 of M.P. Rules. For ready reference Section 7 of the Act of 1972 is as under :-

Section: 7 Determination of the amount of gratuity.

(1) A person who is eligible for payment of gratuity under this Act or any person authorised, 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 gratuity so determined.

(3) The employer 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) 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:

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.]

(4) (a) If there is any dispute as to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.]

(c)] The controlling authority shall, after due inquiry and 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 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, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the 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 commissions 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, 1860 (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 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 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 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 under subsection (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 parties to the appeal a reasonable opportunity of being heard, confirm, modify or reverse the decision of the controlling authority.

13. Rule 7 of M.P. Rules 1973 is as under:-

7. Application for gratuity. -

(1) An employee who is eligible for payment of gratuity under the Act, or any person authorised, in writing, to act on his behalf, shall apply ordinarily within thirty days from the date the gratuity became payable, in Form I to the employer :

Provided that where the date of superannuation or retirement of an employee is known, the employee may apply to the employer before thirty days of the date of superannuation or retirement.

(2) A nominee of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply ordinarily within thirty days from the date gratuity became payable to him, in Form 'J' to the employer :

Provided that an application in plain paper with relevant particulars shall also be accepted. The employer may obtain such other particulars as may be deemed necessary by him.

(3) A legal heir of an employee who is eligible for payment of gratuity under the second proviso to sub-section (1) of Section 4 shall apply, ordinarily within one year from the date of gratuity became payable to him, in Form 'K' to the employer.

(4) Where gratuity becomes payable under the Act, before the commencement of these rules, the period of limitation specified in sub-rules (1), (2) and (3) shall be deemed to be operative from the date of such commencement.

*(5) An application for payment of gratuity filed after the expiry of the periods specified in this rule shall also be entertained by the employer, if the applicant adduces sufficient cause for the delay in preferring his claim, and **no claim for gratuity under the Act, shall be invalid merely because the claimant failed to present his application within the specified period.** Any dispute in this regard shall be referred to the controlling authority of the area for his decision.*

(6) An application under this rule shall be presented to the employer either by personal service or by registered post acknowledgement due.

(Emphasis supplied) ”

14. As per Section 7(1) of the Act of 1972, a person who is eligible for payment of gratuity is required to send written application to the employer for payment of gratuity in the manner as may be prescribed. However, as per Section 7(2), there is obligation cost on the employer to determine the amount of gratuity and give notice in writing to the person to whom gratuity is payable and further as per Section 7(3), to arrange payment of the said amount of gratuity within 30 days from the date it become payable to the person entitled to receive the gratuity.

15. When Section 7(1) is read along with Section 7(2) and (3) it becomes clear that the obligation on the employer to pay gratuity does not depend on application to be submitted by the employee who has exited from the

employment. The application to be submitted by the employee is right given to the employee to submit an application to the employer merely so that the employer may be reminded of his statutory obligation. However, in the same breath Section 7(2) & (3) make position abundantly clear that without waiting for application of the employee it is the obligation of the employer to determine the amount of the gratuity and arrange the payment of the same within 30 days from the date it becomes payable. Section & (2) and (3) are independent provisions and do not depend on prior compliance of section 7 (1). Section 7 (2) operates as soon as gratuity “becomes payable” and not upon submission of application to the employer. The date from which it “becomes payable” is also laid down in Section 4 (1) of the Act of 1972, that we will deal in succeeding paragraphs.

16. Section 3-A as inserted by amendment of 1987 further provides that in case compliance of Section 7(3) is not made by the employer within the period specified in Section 7(3) then the employee will be entitled to simple interest at the rate to be notified by the Central Government and further that the payment of interest can be defended by the employer only if the delay is due to fault of the employee and further that the employer had obtained permission in writing from the Controlling Authority for the delayed payment on this ground.

17. The unamended provision of Section 7(3) as existed prior to 1987 amendment was as under:-

“(3) The employer shall arrange to pay the amount of gratuity, within such time as may be prescribed, to the person to whom the gratuity is payable”

It is further important to note here that there was no provision of Section 3-A prior to 1987 which when read along with Section 7(2) & (3) that if the employer does not pay gratuity and does not make compliance of Section 7(3) then interest would continue to run from the date on which the

gratuity becomes payable. This provision of Section 3-A makes it clear that neither liability to pay gratuity or right to receive gratuity nor liability to pay interest or right to receive interest depends on any limitation period nor it depends in on any application to be submitted by the employee. The right is absolute, and gratuity becomes payable irrespective of application to be preferred to the employer and it has to be paid within 30 days from the date it becomes payable.

18. The date on which the gratuity becomes payable to an employee is laid down in Section 4(1) as the date on which employee leaves employment after rendering continuous service for not less than five years either on account of superannuation, retirement, resignation, death or disablement. Section 4 (1) is as under:-

“Section: 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:”

19. Aforesaid Section 4(1) of Act of 1972 when read in juxtaposition to Section 7(2) & (3) and (3-A) makes it clear that the date on which the gratuity becomes payable is the date on which the employee leaves employment and it does not depend on adjudication of claim of the employer in any manner nor it is subjected to application to be made by employee.

20. When coming to the provisions of M.P. Rules, it is very clear to this Court that even said rules though provide for limitation but the second part of Rule 7(5) provides in no uncertain terms that no claim for gratuity under this Act shall be invalid merely because the claimant failed to present his application within the specified period. Though it is mentioned that the

dispute in this regard shall be referred to the Controlling Authority for its decision but as per substantive provision of Act laid down in Section 7, the Controlling Authority is required to adjudicate the disputes as per Section 4 of the Act of 1972 which are in the matter of dispute as to the amount of gratuity payable to an employee or as to the admissibility of claim of the employee for payment of gratuity or as to the person entitled to receive the gratuity and obligation is cast on the employer to deposit with the Controlling Authority such amount as he admits to be payable by him as a gratuity. Therefore, no jurisdiction has been conferred on the Controlling Authority to adjudicate any dispute of limitation or as to the claim of the employee being barred by the limitation because such provision runs directly in conflict with the substantive provisions of the Act of 1972 which is a social security welfare legislation and Section 7(2) & (3) and 3 (A) as discussed above by us in this order do neither provide for nor contemplate of any limitation period for claiming gratuity and these provisions, more particularly after amendment in the Act of 1972 in the year 1987, no doubt remains that the liability to pay gratuity and the right to receive gratuity matures on the date of exit from employment and it does not mature on claim being made to the employer and the adjudication of claim to be made by the employer. The claim becomes perfect and mature on the date of exit from employment and Controlling Authority will adjudicate only if there is dispute as to admissibility of the claim which may be in the matter of length of service, wages last drawn, nature of employment, nature of exit from employment, dispute as to forfeiture of gratuity as per Section 4(6) etc. However, the act does not contemplate any limitation for raising claim for payment of gratuity by an employee nor it contemplates defeating such claim by any law of limitation.

21. It is trite in law that limitation does not curtail substantive right but curtails a remedy to claim substantive right. When the remedy provided as

per Section 7(4) of the Act of 1972 is unconditional and does not depend on limitation and more particularly Sections 7(2) (3) and (3A) make it clear that the right would mature on the date of exit from employment and it becomes obligatory for the employer to deposit admitted claim of the employee with the Controlling Authority within 30 days of exit from employment then the employer cannot raise the ground of limitation to defeat or defend such claim of gratuity.

22. The aforesaid issue of applicability of limitation in case of delayed approach to the Controlling Authority was dealt with by a Single Bench of this Court in detail in the case of **MP Madhya Kshetra Vidyut Vitran Company Limited versus D.D. Singh** reported in **2014(3) MPLJ 641** and by taking note of the relevant legal provisions in the matter of payment of gratuity, a single bench of this Court dealt with the aspect of applicability of limitation as per the Rules of 1973 and held that since in terms of Rule 7(5), it has been provided that no claim for gratuity under the act shall be invalid only because the claimant failed to present his application within the specified period, the claims for gratuity cannot be dismissed on the ground of limitation. The Single Bench in the aforesaid case held as under:-

“12. So far the question of delay in approaching the Authority is concerned, the Rule 7 of Payment of Gratuity (M.P.) Rules, 1973 prescribes the method of submission of application. Rule 7(5) provides that no claim for gratuity under the Act shall be invalid merely because the claimant failed to present his application within specified period.”

The aforesaid judgment stands affirmed in appeal by the Division Bench in WA No. 2013/2014 (Gwalior).

23. In the case of **Mohan Lal (supra)** a Division Bench of this Court has considered the aforesaid Section 7 of the Act of 1972 as well as Rule 7 of M.P. Rules held that the claim of the employee for gratuity would not be defeated by delay. The Division Bench held as under:-

“6. We revert to the other ground which prevailed with the Appellate Authority in holding that the claim-petition was not maintainable because application filed with the employer by the employee under Rule 7(1) was time barred. That has a short and also a long answer. Sub-Rule (5) of Rule 7 effectively rebuffs that contention. It provides that on the sole ground that gratuity was claimed late and application was not made within specified period to the employer the claim shall not be treated invalid. However, the same provision also contemplates that if there is any dispute and if there is any controversy in regard to belated application that shall be resolved by the Controlling Authority. Evidently, for the first time in appeal, the ground was urged to deprive the Controlling Authority of its jurisdiction envisaged under Rule 7(5) to deal and decide the controversy. That apart, it has been rightly urged by Shri Lahoti, appearing for the petitioner/employee, that neither section 7(1) nor Rule 7(1) is mandatory. That is made clear not only by sub-rule (5) of Rule 7, but by the other parts of the parent provisions contained in section 7. Sub-section (2) makes it employer's duty to determine the amount of gratuity and to give notice in writing to the employee of the gratuity payable "whether an application referred to in sub-section (1) has been made or not". Sub-section (3) obligates the employer to arrange payment of the gratuity within the time prescribed and by sub-rule (4) he is required to deposit with the Controlling Authority such amount as he admits to be payable by him against gratuity. It is noteworthy that neither clause (a) of sub-section (4) nor the explanation appended to it prescribes any period of limitation for making application to the Controlling Authority for deciding dispute of non-payment of gratuity.”

24. Another Division Bench of this court in the case of **L.S. Patel (supra)** was again seized of the similar issue and again held that the claim of gratuity would not be defeated by limitation as provided under the Rules and by taking note of the provisions of Section 7(1) (2) (3) and (3A) of Act of 1972, the Division Bench held as under:-

“10. From aforesaid discussion, what comes out loud and clear is that the principal amount of gratuity determined and payable u/S 7(1) (2) and (3) of the 1972 Act is statutory in nature and there is no limitation prescribed under the 1972 Act for claiming the same. Similarly, the amount of interest payable under sub-section (3A) of Section 7 of the 1972 Act is also statutory in nature. When both i.e. the principal amount of gratuity and the interest accrued thereupon becoming payable

due to failure of employer to release gratuity within 30 days of retirement, then it follows as a necessary consequence that the amount of statutory interest worked out and becoming payable u/S 7(3A) becomes part and parcel of the principal amount of gratuity determined and payable u/S 7(1)(2) and (3) of the 1972 Act."

25. This is settled in law that amounts of retiral dues, including gratuity, are not bounties. It is deferred payment to the employee for the long services rendered by him to the Department. This payment is made to the employees in December of their life with a view to provide them a security. They can use this amount for their own settlement, discharge of social obligations, etc. The retiral dues are also recognized as property under the Article 300-A of the Constitution. A person can be deprived of his property only in accordance with a "law" made in this regard. In **Bhaskar Ramchandra Joshi v. State of M.P.**, reported in **2013 (4) MPLJ 35**, this Court has considered this aspect and opined as under:—

"10. The Apex Court on different occasions had considered the scope and ambit of property. In Madhav Rao Scindia v. Union of India, (1971) 1 SCC 85 : AIR 1971 SC 530 opined that Prievy Purse payable to exrulers is property. In Nagraj, K. v. State of A.P., AIR 1985 SC 553, Apex Court opined that right of person to his livelihood is property which is subject to rules of retirement. In State of Kerala v. Padmanabhan, (1985) 1 SCC 429 : AIR 1985 SC 356 the Apex Court opined that right of pension is property under the Government service Rules, In Madhav Rao Scindia v. State of M.P., AIR 1961 SC 298 and State of M.P. v. Ranojirao, AIR 1968 SC 1053, the Apex Court opined that property in the context of Article 300-A includes 'money', salary which has accrued pension, and cash grants annually payable by the Government; pension due under Government Service Rules; a right to bonus and other sums due to employees under statute. This view was also taken in (1971) 2 SCC 330 : AIR 1971 SC 1409, Deokinandan v. State of Bihar. Bombay High Court in the case reported in (2012) 3 Mah. L.J. 126, Shapoor M. Mehra v. Allahabad Bank opined that retiral benefits including pension and gratuity constitute a valuable right in property. In Deokinandan (supra) Apex Court opined as under :-

"(i) The right of the petitioner to receive pension is property under Article 31(1) and by a mere executive order the State had

no powers to withhold the same. Similarly, the said claim is also property under Article 19(1)(f) and it is not saved by sub-article (5) of Article 19. Therefore, it follows that the order denying the petitioner right to receive pension affects the fundamental right of the petitioner under Article 19(1)(f) and 31(1) of the Constitution and as such the writ petition under Article 32 is maintainable.

11. *In the light of aforesaid legal position, it is crystal clear that right to get the aforesaid benefits is constitutional right. Gratuity or retiral dues can be withheld or reduced only as per provision made under M.P. Civil Services (Pension) Rules, 1976. In the present case, there is no material on record to show that respondents have taken any action in invoking the said rules to stop or withhold gratuity or other dues.”*

26. The Apex Court in the case of **State of Jharkhand v. Jitendra Kumar Shrivastava**, reported in **2013 AIR SCW 4749** opined as under:—

“14. Article 300A of the Constitution of India reads as under: - “300A. Persons not to be deprived of property save by authority of law No person shall be deprived of this property save by authority of law.” Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced”.

27. No other enabling provision is brought to the notice of this Court which permits the employer to deprive the employee from the right of gratuity, only on the ground of delay. In absence of any enabling provision, in our opinion, employees cannot be deprived of their right of gratuity which is derived from Article 300-A of the Constitution. Thus, ground of delay is of no help to the appellant. It is therefore, held that the ground of delay taken by the appellant is contrary to the provisions of the Act of 1972 and the M.P. Rules.

28. Even coming to the manner in which the appellant has proceeded in the instant matter it is seen that the respondent No.3-employee had

contended in her application before the Controlling Authority that she has been approaching the school for release of gratuity but she has only been given assurance from time to time but no gratuity has been paid. In the reply this assertion was not denied but on the contrary plea was taken that the Act of 1972 does not apply to the school and also that the petitioner does not fall within the class of employees entitled to receive gratuity because neither the respondent No.3 falls within the definition of employee in terms of Section 2(e) nor school falls within the definition of employer in terms of Section 2(f) of the Act of 1972. The plea of limitation was also raised but there was no denial that the applicant had been approaching the school (which may be by oral request) for release of gratuity from time to time which was specifically pleaded in the application.

29. In view of the above, we find that neither the entitlement of the respondent No.3 to receive gratuity would depend on a prior formal application to be submitted to the employer-appellant nor limitation period would apply because it would not apply to the facts of the case. Even irrespective of facts of this case, no limitation is applicable for claiming gratuity by the employee who has completed more than five years of service till the date of exit as held by us in detail above and also by Division Benches of this Court in the case of **Mohan Lal (supra)** and **L.S. Patel (supra)**.

30. So far as the contention raised in relation to the employee being not entitled to approach the Controlling Authority directly is concerned, we find no merit in the aforesaid ground for the reason that in the application it was pleaded that the employee has been approaching the employer repeatedly which was not denied and further that looking to the scheme of Section 7 of the Act of 1972 it is the duty of the employer to pay gratuity as soon as it becomes payable and in default thereof, the employer is liable to pay gratuity from the date it becomes payable which is irrespective of

application to be made by the employee and said right is given to the employee specifically as per Section 7(2) of the Act of 1972. Once employer does not pay gratuity within 30 days as provided under Section 7(3), then a dispute as to amount of gratuity payable to employee is created because the employer has not carried out his statutory obligation within the statutory time limit. Once the employee alleges that he was entitled to gratuity and the employer failed to pay the same within 30 days, then a dispute is there which does not depend on the prior adjudication by the employer because employer is not the adjudicating authority under the Act of 1972. Rather, he is the person who is saddled with the liability under the Act of 1972 and the argument raised before us raising the status of employer to the status of adjudicating authority prior to raising claim even before the Controlling Authority that exercises statutory jurisdiction, is utterly misconceived and misplaced and is contrary to the scheme of the Act of 1972. It deserves to be and is hereby rejected.

31. Consequently, no reasons are made out to interfere in the order passed by the Controlling Authority as confirmed by the learned Single Judge. The appeals being devoid of merits stand **dismissed**. Let the amount alongwith interest as ordered by the Controlling Authority as affirmed by the learned Single Judge be paid to the respondent-employees within 30 days, if not already paid.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE