IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VIVEK JAIN

MISC. PETITION No. 3996 of 2025

CEMENT CORPORATION OF INDIA

Versus

SHRI SHANKAR DAS BAIRAGI AND OTHERS

WITH

MISC. PETITION No. 3998 of 2025

CEMENT CORPORATION OF INDIA

Versus

SHRI RAM SINGH RAJPUT AND OTHERS

MISC. PETITION No. 4001 of 2025

CEMENT CORPORATION OF INDIA

Versus

SHRI RAM NARESH SINGH AND OTHERS

MISC. PETITION No. 4005 of 2025

CEMENT CORPORATION OF INDIA

Versus

SHRI DHANIRAM SAHU AND OTHERS

Appearance:

Shri Amit Khatri - Advocate for petitioners.

Shri Parma Nand Sahu and Shri Rambachan Sahu - Advocates for respondent No.1 in MP No.3998/2025, MP No.4001/2025 and MP No.4005/2025.

Shri Sanjay Kumar Malvi - Advocate for respondent No.2 in MP No.4001/2025.

ORDER

(Reserved on : 01.12.2025)

(Pronounced on : 06.01.2026)

The present petitions are filed by the same employer against different employees involving same legal issue and therefore, they are being heard and decided by this common order. For the sake of convenience, facts shall be taken from M.P. 3996/2025.

2. The employees in all these cases except in M.P. No.3996/2025 were appointed in the year 1999, whereas the employee in M.P. No.3996/2025 was appointed on 01.02.1997. The employee in M.P. No.3996/2000 has retired on 30.11.2019, employee in M.P. No.3998/2025 has retired on 30.09.2021, employee in M.P. No.4001/2025 has retired on 01.01.2019 and that in M.P. No.4005/2025 has retired on 31.12.2018. All these employees filed applications before the Controlling Authority seeking gratuity in the year 2021 or 2022, which is admittedly 2 to 3 years after their retirement.

3. It is contended by learned counsel for the petitioner that the Controlling Authority as well as the Appellate Authority under Payment of Gratuity Act, 1972 (for short referred to as Act of 1972) have erred in passing the impugned orders and allowing the applications for payment of Gratuity filed by the respondent employees. It is argued that the impugned orders cannot be allowed to sustain, because the respondent employees were not the employees of the petitioner-Cement Corporation of India, but they were employed through contractors and they were outsourced employees. It is argued that application for Gratuity is not maintainable against the present petitioner, which is a Public

Sector Undertaking of Government of India, because the petitioner company never employed the respondent employees directly and these employees had been engaged through a contractor and were contractors' employees. It is argued that as per Clause 21 of the contract executed between the petitioner company and the contractors, the responsibility of payment of gratuity and terminal benefits fell on the contractor. A copy of the contract, though is not part of the record of these petitions, but was produced at the time of hearing of the present petitioner before this Court, for perusal of the Court.

4. It is further argued that in absence of impleading the contractor, no application for payment of Gratuity could be filed against the petitioner company. It is further argued that the employees had filed applications before the Controlling Authority with delays, because as per the provisions of Rule 7(2) of Payment of Gratuity Central Rules 1972, application for gratuity has to be made within 30 days of the date from which the gratuity falls due and as per Rule 7(3), even legal heir of a deceased employee has to make application within one year from the date on which gratuity falls due. However, in the present case, the applications were filed in the year 2021-2022, which is almost 2 to 3 years after retirement of the concerned respondents and therefore, the authority could not have directed payment of gratuity, because the application before the controlling authority had become barred by time.

5. It is further argued that interest has been granted from the date of superannuation, but it should have been granted from the date of application in place of date of superannuation.

6. *Per contra*, it is vehemently argued by learned counsel for the respondent employees that the controlling authority has not erred in directing payment of gratuity to the respondent employees, because the contract being executed with contractor was only a camouflage, because the respondents have been working continuously from 1998-1999 and had worked of almost 20 years or even more till the date of their retirement in the year 2019 to 2021 after having been appointed in the year 1997 to 1999. It is argued that the contractors kept on changing every year, but the respondent-employees continued to work, because whoever was the new contractor, the respondents were always engaged for the same work which they were doing till their superannuation or resignation, whichever was the case. It is argued that the contract was executed with the contractors for one year period to provide security arrangements at the cement factories managed by the petitioner company and the respondents continued to be engaged by each succeeding contractor, and that continued for a good period of more than 20 years. Therefore, the contract was only a camouflage. Even otherwise, the petitioner-company being the principal employer is bound to make the payment of Gratuity to the respondents. On these assertions, it is prayed to confirm the orders of the Controlling Authority

and the Appellate Authority and to reject the petitions filed by the petitioner company.

7. Heard.

8. In the present case, the question arises that whether the application for Gratuity of the respondent workmen was hit by limitation. It is undisputed that the Act of 1972 does not lay down any limitation seeking payment of gratuity and on the contrary, the said Act makes a provision in Section 7(3) that gratuity shall be paid within 30 days from the date it becomes payable.Gratuity becomes payable from the date of termination of service of the employee in terms of Section 4 (1) whether the termination of service is on account of superannuation, retirement, resignation or death.

9. The question that whether the application seeking Gratuity can be stated to be hit by limitation once there is no limitation in the Act of 1972 and whether the limitation having been set up in the rules, would defeat the substantive right of the employee to receive gratuity conferred upon him by the Act of 1972, has recently been considered by a Division Bench of this Court in W.A.No.563/2023, wherein the Division Bench has held as under:-

> *"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". Subsection (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 16 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."

10. Therefore, in view of the matter having been conclusively decided by the Division Bench, it has to be held that the claim of the respondent workman could not have been defeated on the ground of delay and therefore, this argument of the petitioners is discarded.

11. The second argument was raised with much vehemence that as per Clause 21 of the agreement with the contractor, the liability to pay gratuity fell on the contractor. The said Clause 21 is as under:-

"21. Gratuity/Terminal benefits

It will be the liability of the security agency to pay Gratuity/Terminal benefits to the employees as per the existing rates. The terminal benefits will be paid monthly in cash or as and when the security guard leaves employment or soon after the contract is over."

12. The aforesaid provision in the agreement has been held to be mandatory one so as to argue before this Court that in the absence of contractor being impleaded as party, the application for gratuity was not maintainable before the controlling authority.

13. The aforesaid argument is very surprising in nature, because it is not in dispute that contractors kept on changing every year or after every couple of years and the respondents continued in employment for more than 20 years.The aforesaid fact that the contractor agency was routinely replaced after every one or two years whereas the respondents continued for more than 20 years give rise to only one inference, that the respondents were in fact working with the petitioner and the contract was only a camouflage. A particular Contractor after having provided services for one or two years only, would otherwise also not be liable to pay Gratuity, unless the tenure under a particular Contractor was more than five years.

14. Even as per the Contract Labour Regulation and Abolition Act, 1970, the following provision has been made for responsibility to pay wages to the employees engaged through contractor.

> *"21. Responsibility for payment of wages.—(1) A contractor shall be responsible for payment of wages to each worker employed by him as contract labour and such wages shall be paid before the expiry of such period as may be prescribed.*
>
> *(2) Every principal employer shall nominate a representative duly authorised by him to be present at the time of disbursement of wages by the contractor and it shall be the duty of such representative to certify the amounts paid as wages in such manner as may be prescribed.*
>
> *(3) It shall be the duty of the contractor to ensure the disbursement of wages in the presence of the authorised representative of the principal employer.*
>
> *(4) In case the contractor fails to make payment of wages within the prescribed period or makes short payment, then the principal employer shall be liable to make payment of wages in full*

> *or the unpaid balance due, as the case may be, to the contract labour employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor."*

15. Section 21(4) makes it mandatory for the principal employer to make payment of wages to the contract labour employed by the contractor and recover the amount from the contractor in case the contractor fails to make payment of wages. Therefore, once it is not disputed that the contractor has not paid gratuity to the respondents, the petitioner being principal employer under Act of 1970 cannot raise an objection that in the absence of impleading contractor, no order can be passed, because the record of working of the respondents must be with the petitioners and so far as the liability to fall on the contractor is concerned, Clause 21 of the agreement quoted above read with Section 21(4) of Act of 1970 gives a right to the petitioners to make a recovery from the contractor from the bills, securities and other dues of the contractor to the extent of liability to pay gratuity to the respondents, which would be paid by the petitioner in place of the contractor. Therefore, even if it is inferred that the liability to pay Gratuity fell on the Contractor, the workmen cannot be non-suited for non-impleadment of the contractor.

16. So far as the liability of the petitioners to pay gratuity is concerned, in terms of the Section 21(4) of Act of 1970 as quoted above, the principal employer is under obligation to pay all wages. The wages referred to under the

Act of 1970 are not "salary", but the definition of wages as given under Act of 1970 as per Section 2(h) is as under:-

> "*2(h) "wages" shall have the meaning assigned to it in clause (vi) of section 2 of the Payment of Wages Act, 1936 (4 of 1936);"*

17. Coming to Section 2(vi) of Payment of Wages Act, 1936, the definition whereof has been adopted for the purpose of Act of 1970, the said definition is a very wide definition and reads as under:-

> *(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes—*
>
> *(a) any remuneration payable under any award or settlement between the parties or order of a Court;*
>
> *(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;*
>
> *(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);*
>
> ***(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;***
>
> *(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force, but does not include—*
>
> *(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;*

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of 2 [appropriate Government];

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;

(4) any travelling allowance or the value of any travelling concession;

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).”

18. The said definition includes not only salary, but includes all remuneration, additional remuneration as well as any sum which becomes payable by reason of termination of employment of the employee under any law, contract, instrument, etc. The dues of gratuity being dues which become payable on termination of employment are therefore, covered within the larger definition of “wages” as per Section 2(vi)(d) of Payment of Wages Act, 1936.

19. The same issue was raised before the Madras High Court in the case of ***Superintending Engineer v. Appellate Authority, Joint Commissioner of Labour, 2012 SCC OnLine Mad 5357*** and the High Court of Madras held as under:-

“6. *The only question that has to be considered in this petition was whether the petitioner is eligible for gratuity for the period from 16.2.1988 to 30.4.1999. While the stand of the workman was that he was employed by the Board and also granted service certificate and the said Certificate was also produced before the controlling authority. But however the stand of the Board was that it is only after the abolition of the contract labour and pursuant to the recommendations made by Justice Khalid's Commission, he was given employment as helper with effect from 1.5.1999, but the controlling authority held that even assuming that the service rendered from 16.2.1988 to 1.5.1999 is under contractor, in the absence of contractor being paid gratuity for the*

said period, the workman is eligible to get gratuity from the petitioner-Board, which is the principal employer.

7. *In this context, reliance was placed upon a judgment of this Court in Madras Fertilisers Limited v. Controlling Authority under Payment of Gratuity Act [2003 (97) FLR 275 (Mad.).] , by Justice V.S. Sirpurkar (as he then was). In the said judgment, it was held that the contractor, who was engaged the workmen do not pay the gratuity then by virtue of section 21(4) of the Contract Labour (Regulation and Abolition) Act, the principal employer is liable to pay all dues and in such circumstances, the principal employer, after paying the amount, can collect the dues payable from the respective contractor. In paragraphs 26 and 27 of the said judgment, this Court had observed as follows:—*

> *"20. Learned Counsel argues that payment of gratuity is clearly excluded by % sub-clause (6) which has been reproduced above. According to the learned Counsel, no gratuity could be payable even under Clause (d) and, therefore, sub-clause (6) will apply on all fours to the present case. Reading sub-clause (6) it is clear that gratuity could be excluded from the Wages only if such gratuity is not Covered in Clause (d). The language of sub-clause (6) is very clear. However, the contention of the learned Counsel is that gratuity under the Payment of Gratuity Act is not covered by Clause (d) at all and in fact, that clause does not refer to the gratuity at all. This contention is obviously incorrect for the simple reason that otherwise there was no occasion for the legislature to mention the term "any gratuity" in sub-clause (6). The very language of sub-clause (6) suggests that any gratuity which is not covered by Clause (d) is excluded from the term "wages". This would presuppose that Clause (d) covers some gratuity. Which would that gratuity be is the moot question to be answered. The answer is to be found in the plain language of Clause (d) which opens with the words "any sum which by reason of the termination of employment of the person employed is payable under any law,..." There can be no dispute that the termination of employment of respondents 4 to 41 entitled them to receive the payment of gratuity under the law called Payment of Gratuity Act. This clause is complete in itself and, therefore, it can be safely held that the gratuity which is payable under the Payment of Gratuity Act is well covered under Clause (d). Learned Senior Counsel, however, suggests that the subsequent clause starting from the words "contract or instrument" suggests that such law, contract or instrument should not provide for the time within which the payment is to be made and in fact, there is a time limit prescribed in the Payment of Gratuity Act. In my view, such cannot be the import of the last clause. The last clause qualifies only the "contract or instrument" because of the user of the word "provides". Now if the letter "s" is added to the word "provide", it would be only when there is the user of singular subject as against the plural subject. The phrase "contract or instrument", because of the existence of the word "or" would become a singular and, therefore, the verb will have to be used with the addition of the letter "s". But such would not be the position if the word "law," is also to be added.*

> *It will then become "law and contract or instrument" in which case, the verb will have to be used as if the subject is plural. Therefore, it is clear that the clause starting from the word "contract" and ending with the words "is to be made" is an independent clause and the qualification given in that clause is only for "contract or instrument" and not for "law". The plain meaning of the clause would be that where any sum is payable on termination of employment of the person under any law (in this case Payment of Gratuity Act), it would be covered under Clause (d) and, therefore, it excluded from the operation of sub-clause (6) and therefore will amount to wages. Once this construction is accepted, it is clear that;.t will be the basic responsibility, under section 21(4) of the Contract Labour Act, of the petitioner to make the payment of gratuity and the petitioner will have a right to recover that su/n from the third respondent contractor because, according to me, the initial responsibility to make the payment of gratuity lies with the third respondent-contractor.*
>
> *21. Accordingly, the petition is allowed to this extent only. Resultandy, the petitioner shall make the payment of gratuity as per the calculations and shall be entitled to recover the same from the third respondent-contractor."*
>
> ***8.** As against the order passed by the controlling authority, the petitioner preferred an appeal under section 7(7) of the Payment of Gratuity Act to the first respondent. The first respondent took up the appeal on his file as A.G.A. No. 52 of 2006 and issued notice to the second respondent-workman. The second respondent, workman, also filed his objections. Thereafter, after hearing both the parties, the authority confirmed the order passed by the controlling authority. In doing so, he held that even the contractor liability to pay gratuity can be fastened on the principal employer.*
>
> ***9.** The case of the second respondent is fully supported by the aforesaid judgment of this Court in Madras Fertiliser's case (referred to above). Hence, the writ petition stands dismissed. However, it is made clear that it is open to the second respondent to withdraw the amount lying in deposit with the controlling authority, which is a condition precedent for preferring the appeal. No costs. Consequently the connected MPs are closed."*

20. This Court is in respectful agreement with the view taken by the Madras High Court, which in turn is based on an earlier view taken by the same High Court. The provisions of labour laws are beneficial in nature and for that purpose, the definition of wages under the Payment of Wages Act is larger then mere salary and includes retiral benefits and therefore, the petitioners being the principal employer under Act of 1970 were liable to pay "wages", which

included not only salary, but also retiral benefits, though they are having right to recover the amount paid to the respondents from the contractor concerned, if any Contractor can be fastened with such liability.

21. So far as question of interest is concerned, as per Section 7(3)(A), the following has been provided :-

> *"Section: 7 Determination of the amount of gratuity-*
>
> *(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.]"*

22. The aforesaid provision clearly makes it mandatory for the employer to pay interest on the amount of gratuity from the date gratuity becomes payable. As per Section 7(3), gratuity does not become payable from the date of application, but it becomes payable from the date of exit from employment and has to be paid 30 days and therefore, the Controlling Authority has not erred in awarding interest from the date of exit from employment till actual date of payment/deposit of gratuity.

23. Consequently, this Court does not find any good reason to interfere in the order passed by the Controlling Authority and the Appellate Authority. The petitions fail and are **dismissed**. The respondents are at liberty to withdraw the

amount, which is stated to be deposited before the Controlling/Appellate Authority and also to recover the deficit, if any.

(VIVEK JAIN)
JUDGE

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