31

SOCIAL SECURITY& LABOUR LAW

S C Srivastava[*]

I INTRODUCTION

IN THE year 2013, a number of Supreme Court and high court cases have been reported in various important areas of law relating to social security and minimum standard of employment The Supreme Court cases relate to the Contract Labour (Regulation and Abolition), Act, 1970, Employees' Compensation Act, 1923, Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948 and Payment of Gratuity Act, 1972. The high court cases covered almost every important area of social security and minimum standards of employment. The courts generally gave beneficial interpretation to the provisions of social security and minimum standard legislation. Indeed the apex court at times evolved new strategies to deal with various labour issues. This survey seeks to examine the important judgements of the Supreme Court on social security and minimum standard labour legislation.

II CONTRACT LABOUR

In *Baleshwar Rajbanshi* v. *Board of Trustees for Port Trust of Calcutta*,[1] the Supreme Court laid down various principles of great relevance on the prevailing contract labour system. The controversy in this case arose on issuance of a notification issued by the Central Government under section 10[2] of the Contract Labour (Regulation & Abolition) Act, 1970 (CLRA Act) after due consultation with the Central Advisory Board with regard to the conditions of work and benefits

---

* LL.D.(Cal.), Secretary General National Labour Law Association, New Delhi; Formerly Professor & Dean, Faculty of Law, Kurukshetra University and Professor, Head & Dean, University of Calabar (Nigeria); UGC National Fellow (Professor) & Research Professor, Indian Law Institute, New Delhi.

1 (2013) 4 SCC 258.

2 S. 10 deals with prohibition of employment of contract labour and it is as under:- Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

provided for the contract labour and other relevant factors enumerated in sub-section 2 of section 10. By the said notification[3] the government prohibited the employment of contract labour "in the works of sleeper renewal of railway Tracks, repairing, restoration and laying and linkage of tracks in the establishment of Kolkata Port Trust, Kolkata"[4] with effect from the date of publication of the notification in the official gazette. On the issuance of the notification, the appellants who claimed to be engaged for the works covered by the notification for more than two decades through different contractors filed a writ petition before the Calcutta High Court seeking a direction from the high court to the port trust to abolish the system of giving the works covered by the notification to the contractors. On the other hand, the port trust also filed a writ petition in the high court challenging the validity of the notification. Both the writ petitions were heard together by a single judge who upheld the validity of the notification and dismissed the writ petition filed by the Calcutta Port Trust. Thereupon the port trust challenged the decision of the single judge before a division bench of the high court in intra-court appeal. The division bench directed the port trust to approach the Ministry of Labour, Government of India through the Ministry of Shipping for resolving the issue. The order passed by the division bench was challenged by some individual workmen before the Supreme Court .The Supreme Court set aside the order of the division bench of the high court and directed the high court to rehear the port trust's appeal against the judgment of the single judge and to dispose it of in accordance with law. After remand, the division bench of the high court once

---

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as-

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole time workmen.

Explanation– If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final." In this case, the Central Board first constituted a Committee under section 5 of the Act to go into the question of abolition of contract labour in the establishment of Calcutta Port Trust. The committee examined the matter in detail and made its recommendations as follows:- From the above elaboration of work, the job in question needs to be examined in the contract (sic. context?) of provisions of s. 10(2) of the CLRA Act.

3 *Available at:* http://labour.nic.in/content dglwnotifications issued under section10ofthecontractlabour.html.

4 *Supra* note 1 at 258.

again heard the appeal and disposed it by modifying the order of the single judge. By the impugned judgment, the division bench carved out an exception in favour of the respondent from a notification issued by the Central government under section 10(1) of the CLRA Act and held that the notification "would not in any way affect the rights of the port trust to assign the work of laying and linkage of railway tracks as one time measure of RITES, another Central Government Organization".[5] The division bench also, *inter* alia, held that laying and linking as one time measure could not be said to be a perennial nature. In any event, laying of railway tracks is no part of the duty of the port trust. Against this order an appeal was filed before the Supreme Court. The Supreme Court observed that the CLRA Act is a special Act that was framed to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith. The court then referred to the provisions of sections 3,4,5 and 10 of the CLRA Act and the recommendation of the central board which observed that (i) renewal/cancellation of tracks and sleepers have been going on almost continuously in some or other part of the railway tracks and contract workers are working for full 8 hours so the job deemed to be of a perennial nature and (ii) the job performed by the regular employees were almost identical to that of job performed by contract workers and both types of maintenance jobs, *i.e*., day-to-day maintenance and periodical maintenance are required to be done on regular basis. In view of this the board felt that after taking into account the findings of the committee the work done by contract labour was of regular nature and attracted the provisions of section 10(2) of the CLRA Act. In view of this the Supreme Court observed that the notification was issued after following a statutory scheme and is based on a thorough investigation of issues of facts followed by two tiers of recommendations, namely, (i) by the committee constituted under section 5 of the Act and (ii) by the advisory board constituted under section 3 of the Act. The court accordingly held that there was no justification for the division bench of the high court to carve out the exception and to rationalize the assignment of the contract to RITES[6] merely on the ground that it is another central government organization. In view of this the Supreme Court felt that the high court exceeded its jurisdiction in passing the impugned order. Accordingly the court set aside the order passed by the division bench and restored the order of the single judge.

III EMPLOYEES' COMPENSATION ACT, 1923

Oriental Insurance .Co.Ltd. v. *Dyamavva*,[7] decided an extremely important issue as to whether the respondent- claimant would be precluded from seeking compensation under section 166 of the Motor Vehicles Act, 1988 when such claimant have never exercised their option to seek compensation under section 10[8] S. 10 which deals with notice and claim. Inter alia provides that no claim for

5 *Ibid.*

6 A Government of India Enterprise was established in 1974, under the aegis of Indian Railways.

7 (2013) 2 LLJ 149 (SC).

compensation shall be entertained by a Commissioner unless notice of the accident has been given in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is preferred before him within two years of the occurrence of the accident or in case of death within two years from the date of death.

Workmen's Compensation Act, 1923, (now Employees' Compensation Act).

The most important factual aspect of the case is, that Yalgurdappa B. Goudar, while discharging his duties as a pump operator during the course of the second shift on 19.4.2003, while pillion riding on a motorcycle, which was insured with the appellant/Oriental Insurance Company, was hit by a tipper and consequently he died on the spot. Thereupon his wife (widow), and the dependants filed a claim petition under section 166 of the Motor Vehicles Act, 1988 wherein the widow and the children of the deceased sought compensation on account of the motor accident in the course whereof, the husband/father of the claimants had lost his life. In the meantime the port trust on 4.11.2003 intimated the Workmen's Compensation Commissioner, Goa about the aforesaid motor accident and simultaneously deposited an amount of Rs.3, 26,140/- with him as compensation payable to the dependants of the deceased under the Workmen's Compensation Act, 1923. Thereupon, the Workmen's Compensation Commissioner issued a notice to the dependants of the deceased. On receipt of the notice the widow of the deceased appeared before the Workmen's Compensation Commissioner and prayed for the release of the compensation deposited by the port trust with the Workmen's Compensation Commissioner. Since the claim raised by widow of deceased was not contested by the employer, the amount of Rs.3, 26,140/- deposited by the port trust with the Workmen's Compensation Commissioner, was ordered to be released to the widow and daughter of deceased. Quite apart from the determination of compensation by the Workmen's Compensation Commissioner under the Workmen's Compensation Act, 1923, the claim raised by the widow of the deceased under Section 166 of the Motor Vehicles Act, 1988 was independently determined by the Motor Accident Claims Tribunal, Bagalkot. By an award dated 15.7.2008, the Motor Accident Claims Tribunal awarded the claimants compensation of Rs.11, 44,440/-. Out of the aforesaid compensation, the Motor Accident Tribunal ordered a deduction of Rs.3, 26,140/-, (*i.e.*, the amount which had been disbursed to the claimants by the Workmen's Compensation Commissioner, *vide* order dated 29.4.2004). Thus a sum of Rs.8, 18,300/- was ordered to be released to the claimants.

Aggrieved by the aforesaid order passed by the Motor Accident Claims Tribunal, Bagalkot, dated 15.7.2008 the Oriental Insurance Company Ltd,, filed a petition before the High Court of Karnataka Circuit Bench at Dharwad. The high court affirmed the compensation awarded to the claimants by the Motor Accident

---

8 S. 10 which deals with notice and claim *inter alia* provides that no claim for compensation shall be entertained by a Commissioner unless notice of the accident has been gien in the manner hereinafter provided as soon as practicable after the happening thereof and unless the claim is perferred before his within two years of the occurance of the accident or in case of death within two years from the date of death.

Claims Tribunal, Bagalkot. Against this order the appellant-Oriental Insurance Company Ltd. challenged the orders passed by the Motor Accidental Claims Tribunal, Bagalkot, and the high court respectively, awarding compensation to the dependants of the deceased under section 166 of the Motor Vehicles Act, 1988 before the Supreme Court. The challenge raised by the appellant-insurance company was based on section 167 of the Motor Vehicles Act, 1988, which gives an option regarding claims for compensation in certain cases and is as follows:[9]

> Notwithstanding anything contained in the Workmen's Compensation Act, 1923 (8 of 1923) where the death of, or bodily injury to, any person gives rise to a claim for compensation under …the (Motor Vehicles Act, 1988… and also under the Workmen's Compensation Act, 1923, the person entitled to compensation may without prejudice to the provisions of Chapter X claim such compensation under either of those Acts but not under both.

On the basis of the aforesaid section it was contended on behalf of the appellant, that the respondents had been awarded compensation under the Workmen's Compensation Act, 1923, and as such, they were precluded from raising a claim for compensation under the Motor Vehicles Act, 1988. It was pointed out, that an option was available to the claimants to seek compensation either under the Workmen's Compensation Act, 1923 or the Motor Vehicles Act, 1988.The claimants, according to appellant had exercised the said option to sought compensation under the Workmen's Compensation Act, 1923. In this behalf it was pointed out, that the claimants having accepted compensation under the Workmen's Compensation Act, 1923, were precluded by Section 167 of the Motor Vehicles Act, 1988, to seek compensation (on account of the same accident) under the Motor Vehicles Act, 1988.

In view of above the question for determination before the Supreme Court was whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. Responding this issue the court observed that the procedure under section 8 aforesaid is initiated at the behest of the employer 's *suo motu* and as such, it cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen's Compensation Act, 1923. The court pointed out:

> The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the

9 *Supra* note 7 at 156.

> Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under Section 10 aforesaid.

In above view the apex court ruled that the respondents- claimants have never exercised their option to seek compensation under section 10 of the Workmen's Compensation Act, 1923 and therefore it could not be deemed to be precluded from seeking compensation under section 166 of the Motor Vehicles Act, 1988.

From the aforesaid judgment the following conclusions emerge: (i) In order to get compensation determined in motor accident cases it is necessary to exercise his option by filing a claim under section 167 of the Motor Vehicles Act, 1988 and not under the Employees' Compensation Act, 1923. (ii) But once such option is exercised it is immaterial whether the dependent accepts compensation deposited by employer under the Employees' Compensation Act, 1923 even prior to determination of compensation under section 167 of the Motor Vehicles Act, 1988. (iii) In such cases dependents would be entitled to compensation the Motor Vehicles Act, 1988 by deducting the amount already received by such dependent under the Employees' Compensation Act, 1923. (iv)This rule is equally applicable in case of motor accident resulting in bodily injury.

The Supreme Court in *Mst. Param Pal Singh through father* v. *National Insurance Co.*[10] decided two issues, namely, (i) whether death of deceased in the course of employment while driving the truck continuously over a period of time had any casual connection with his employment? (ii) Whether adopted son of the deceases unmarried person entitled to claim compensation as a dependent?

In this case the deceased who was employed as a truck driver was employed truck driver was assigned the duty of driving the truck for trade purposes from Delhi to Nimiaghat near Jharkhand. The said truck was insured with the National Insurance Company. When the vehicle reached near destination the deceased suffered a health setback and therefore parked the vehicle on the roadside near a hotel. Immediately after parking the vehicle he fainted. The person nearby took him to the hospital where the doctor declared that he was brought dead. Thereupon the appellant filed an application before the Workmen's Compensation Commissioner. The claim was resisted by first respondent on two grounds, namely, (i) the appellant had no *locus* to file the claim because his adoption was invalid and (ii) the death of the deceased was due to natural cause and there was no casual connection between death of the decease and employment. The commissioner rejected both the contentions and awarded Rs.2, 20,280/- along with funeral charges. Against this order the respondent filed a wit petition before the Delhi High Court. The high court set aside the order of the commissioner. Aggrieved by this order the appellant filed an appeal before the Supreme Court. Dealing with the validity of adoption the court held that it is conclusively proved by evidence that adoption was validly made. On the issue of death arising out of and course of employment

---

10 (2013)1 LLJ 520 (SC).

the Supreme Court referred to its earlier decisions and applying the principles laid down therein to facts of this case and observed that (i) The unexpected death, may be due to heart failure while driving the vehicle which is about 1152 kms from Delhi and he would have definitely undertaken grave strain and stress due to such long distance driving. (ii) Constant driving of heavy vehicle as his regular avocation can be safely held to be the contributory factor if not sole cause of his unexpected death.(iii) Such an untoward mishap can be reasonably described as an accident as having been caused solely due to nature of employment which was in course of such employer's trade or business.

The court accordingly held that there was a casual connection to the death of the deceased with his employment. It accordingly affirmed the decision of the Workmen's Compensation Commissioner and set aside the order of the high court.

In *Dredging Corp. of India Ltd* v. *P.K. Bhattacherjee*[11] the Supreme Court emphasised the need to determine the factual position whether the employee is chemic heart condition developed as a consequence of any stress or strain of his employment with the appellant-company. In this case the Commissioner, Workmen's Compensation (1st Court), West Bengal held that the respondent met with an accident while in the employment of the appellant and was entitled to compensation computed at Rs.12,00,000/- lakhs which was the maximum awardable, together with simple interest at the rate of twelve per cent per annum till the date of realization. Thereupon the appellant filed a writ petition which was dismissed. The appeal filed before the division bench was also dismissed. Aggrieved by this order the appellant filed a special leave petition before the Supreme Court. The contention of the appellant was that the respondent/claimant was diagnosed immediately after 27.12.1999 to be suffering an ischemic heart ailment, rendering it legally impermissible for the appellant-company to continue any further with his services. His argument is that this health malady has not arisen as a consequence of the respondent's services with the appellant, and hence no compensation was payable under section 3[12] of the Employees' Compensation Act, 1923 which comes into operation only in the event of an employee suffering personal injury caused by an accident arising out of and in the course of his employment. It was also contended that an ischemic heart condition is personal to the constitution of the respondent, totally unrelated to his service. The court felt that both the courts below have misdirected themselves in law in that because the illness of the employee was discovered while he was in actual service it has led them to the conclusion that compensation is payable under section 3 of the Employees' Compensation Act, 1923 ought to have distinguished between the discovery of the health condition while in service and the health condition having occurred during service. He ought to have satisfied himself fully on this aspect of the case rather than come to a conclusion that an accident had occurred, for which the evidence is extremely scanty. For these reasons, the court set aside the impugned order as well as the

11 2013 LLR 1121.

12 Employer's liability for compensation.-

(1) If personal injury is caused to a *[employee] by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter:

order of the commissioner and remanded the matter back to the court of the commissioner for fresh adjudication de novo to determine whether the employee's is chemic heart condition developed as a consequence of any stress or strain of his employment with the appellant-company.

Effect of remarriage of the wife of deceased employee for sharing compensation

In *Mandadi Adilakshmi* v. *Vallabhaneni Shiv Prasad* [13] a question arose whether the appellant ,the wife of the deceased who marries after demise of the employee is entitled to compensation under the Employees' Compensation Act, 1923 (EC Act) as dependent? The Andhra Pradesh High Court answered the question in affirmative. The court gave following reason in support of its conclusion and laid down the following principles:[14]

i. Section 2(d)[15] of the EC Act which defines the term 'dependent' does not make a distinction between a person who remains widow and who remarries.

ii. The status of person as dependent of the workman (employee) has to be determined as on the date of his death and the appellant being wife of the deceased workman, she is dependent of the decease workman (employee) and is entitled to his share of the compensation.

IV EMPLOYEES' STATE INSURANCE ACT, 1948

Sudarshan Home Appliances v. *Deputy Director, ESI Corporation,*Chennai,[16] decided an important issue whether the appellant-Sudarshan Home Appliances is

---

Provided that the employer shall not be so liable —

(a) in respect of any injury which does not result in the total or partial disablement of the employee for a period exceeding three days;

(b) in respect of any injury, not resulting in death or permanent total disablement caused by an accident which is directly attributable to—

(i) the employee having been at the time thereof under the influence of drink or drugs, or

(ii) the wilful disobedience of the employee to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of employees, or

(iii) the wilful removal or disregard by the employee of any safety guard or other device which he knew to have been provided for the purpose of securing the safety of employee.

13 (2013) 4 LLJ 42. (A.P.)

14 *Id*. at 44.

15 S. 2(d) defines "dependant", *inter alia* , to mean any of the following relatives of deceased employee, namely:- (i) a widow, (ii) a minor legitimate, (iii) adopted son, (iv) an unmarried legitimate, or Ivi) adopted daughter or a widowed mother;

16 2013 Lab. I.C. 434.

liable to pay the contribution in respect of work given to outside agencies since the appellant has no direct supervision in the work done by the job work contract? In this case appellant gave work to outside agencies on job contract basis and there was no direct supervision on their work. On these facts the Madras High Court held that merely being employed in connection with the work of an establishment in itself does not mean that he is a person to be termed as employee. Therefore appellant is not liable to pay contribution under the ESI Act. The aforesaid decision applies in cases of job contract and not in case of labour contract. In later cases the Employees' State Insurance Act, 1948 would be applicable.

V MATERNITY BENEFIT

Dr. Kiran Bajaj v. *State of Haryana*[17] decided an important issue as to whether the employee working on contract basis can claim parity with the regular employees since regular employees are entitled to six month's maternity leave, which provision is better than what is provided in the Maternity Benefit Act, 1961. In this case the petitioner who was employed on contract basis by the University applied for maternity leave from 11.09.2008 to 01.10.2008, which was granted to her. Thereafter, she proceeded on further leave *w.e.f.* 07.10.2008, which was also sanctioned. She again applied for leave from 15.10.2008 up to 15.03.2009. However, the leave for latter period was granted without pay as leave as per section 5(3) of the Maternity Benefit Act was already availed by her for which instructions have been issued. Aggrieved by this order the petitioner challenged the validity of the aforesaid instructions in a writ petition in the Punjab & Haryana High Court on the ground that these are discriminatory, inasmuch as the petitioner cannot be given different treatment than those employees who are working on regular basis in so far as benefit of maternity leave is concerned. It was submitted that she is entitled to six months' maternity leave which is admissible to the regular employees. The court following the Supreme Court judgement of *Secretary, State of Karnataka* v. *Uma Devi*,[18] held that she cannot claim parity with the regular employees because giving different treatment to the *adhoc*/contractual employees than what is given to the regular employees does not offend articles 14 and 16 of the Constitution of India. It accordingly dismissed the petition.

VI MINIMUM WAGES ACT, 1948

In M*/S Sunrise Industries, Banglore* v. *Sunrise Industrial Unit*,[19] the Karnataka High Court ruled that once rates of minimum wages are prescribed under the Minimum Wages Act, either as all inclusive under section 4(i), (iii) or by combining basic plus dearness allowance under section 4(1) it is amenable to be split up. It is the pay package. Hence in case where employer is paying total sum which is higher than minimum rate of wages fixed under the Act by taking into consideration all factors including cost of living index, employer is not required to pay DA separately.

---

17 2013 LLR 535.

18 2006(4) SCC 1.

19 2013 LLR 60.

VII PAYMENT OF BONUS ACT, 1965

In Mr. Shachindra Kumar, Factory Manager,Hindustan Uniliver Ltd. v. *State of Karnataka*,[20] a question arose whether the employer is liable to pay bonus to employees engaged by the contractor on par with their regular employee. In this case the officials of labour department lodged a complaint before the judicial magistrate first class alleging that the petitioners have violated the provisions of the Payment of Bonus Act, 1965 (PB Act) by not paying bonus under the PB Act to the employees engaged through contractor and, therefore, they are guilty of the offence punishable under section 28 of the PB Act. The magistrate before whom the complaint was filed took cognizance of the offence. On coming to know of the same the petitioner challenged the order of judicial magistrate by filing a petition before the Karnataka High Court. The court first examined the issue whether the contract labourer is an 'employee' under section 2(13) of the PB Act which defines 'employee 'to mean:

Any person (other than an apprentice)employed on a salary or wage not exceeding ten thousand rupees *per mensem* in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

On the basis of the aforesaid definition the court observed that it does not include contract labour. The court then compared the aforesaid definition with definition of 'employee' under the Employees' State Insurance Act, 1948 and the Employees' Provident Funds & Miscellaneous Act, 1952 and pointed out that unlike the definition of 'employee' under the PB Act these Acts specifically include contract labour. In view of this the court concluded the PB Act does not include either expressly or impliedly contract labour. The court, therefore, remarked that the magistrate has not even read the definition of employee under section 2 (13) before proceeding to take cognizance. The court also held that contract labour cannot be treated at par with the regular employees for the purposes of the PB Act. The court also noted that the petitioners have been paid minimum bonus permissible under the PB Act to contract labour. The court accordingly held that when the contract labourers are not 'employees' there is no obligation on the part of employer to pay bonus at par with regular employees. Therefore it does not violate section 11, which is punishable under section 28 of the PB Act. Accordingly continuance of the prosecution would result in abuse of process of court .The court, therefore quashed the order of the magistrate.

VIII PAYMENT OF GRATUITY ACT, 1972

The Supreme Court in *Y.K. Singla* v. *Punjab National Bank* [21] was called upon to decide (i) whether an employee whose gratuity has been withheld under Regulation 46 of the Punjab National Bank (Employees) Pension Regulations, 1995 (1995 Regulations), which stipulates that such withheld amount of gratuity would become payable only upon conclusion of the criminal proceedings, is entitled to get interest on the withheld payment of gratuity, if he is found not to be

20 2013 LLR 595.

at fault under the Payment of Gratuity Act,1972? (ii)Whether the provisions of the Payment of Gratuity Act can be extended to the employee (appellant), so as to award him interest under sub-section (3A) of section 7 of the Payment of Gratuity Act (PGA)?

In this case judicial proceedings were pending against the appellant Y.K. Singla on the date of his superannuation *i.e.*, 31.10.1996. However, 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 by the bank. While withholding the aforesaid monetary benefits, the appellant was informed by the Punjab National Bank (PNB) through a communication dated 13.5.2000, that the eventual release of the aforesaid retrial benefits, would depend on the outcome of the pending criminal proceedings which concluded only upon his acquittal *vide* order dated 31.10.2009. The amount of gratuity was, however, released on 13.2.2010 and interest thereupon was paid only for the period 31.10.2009 till the date of payment. Dissatisfied with the action of the PNB, in not paying interest to him from the date the aforesaid retrial benefits became due (on his retirement on 31.10.1996) till their eventual release (in February, 2010), the appellant filed a writ petition before the High Court of Punjab & Haryana at Chandigarh which was allowed on 4.5.2011. While allowing the writ petition filed by the appellant, the high court directed the PNB to pay the appellant, interest at the rate of 8% from the date retrial benefits had became due to the appellant, till the actual payment thereof to him. Dissatisfied with the order dated 4.5.2011, passed by the single judge of the high court, the PNB preferred Letters Patent Appeal which was partly allowed by a division bench of the high court, on 29.11.2011. The division bench of the high court held that the appellant was not entitled to any interest on delayed payment of gratuity. Against this order the appellant Y.K. Singla filed an appeal before the Supreme Court. Dealing with the aforesaid issues the Supreme Court observed that 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. 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. The court then proceeded 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. For this purpose the court examined the provisions of sections 4, 7 and ruled:[22]

> ...(S)ection 4 of the Gratuity Act confers upon an employee 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

21 (2013)3 SCC 472.

22 *Id*. at 487-488.

> 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 Payment of Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/ instrument other than the Payment of 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 Payment of 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 there is a provision expressly debarring payment of interest in the manner contemplated under section 7(3A) of the Payment of 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 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 Payment of Gratuity Act, deliberated in detail herein above, would stand negated.

The court accordingly held that even though the provisions of the 1995-Regulations, are silent on the issue of payment of interest the appellant would be entitled to interest, on account of delayed payment under the Payment of Gratuity Act.

General Manager, District Central Co-operative Bank Mayadit, Gwalior v. *Deendayal Gaud*[23] was called upon to determine two issues: (i) can the employer forfeit the gratuity of an employee on mere allegation of pendency of enquiry against him? (ii) Can the employer withhold the gratuity of an employee for non-payment of staff society loan, housing loan, vehicle loan, professional tax etc?

Dealing with the first issue the Madhya Pradesh High Court referred to the provisions of section 4(6) of the Payment of Gratuity Act, 1972 where under gratuity of an employee can be forfeited only on the following two grounds:[24]

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or

23 2013 LLR 418

24 *Id*. at 419.

destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;

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

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of 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.

In view of above, the court held that gratuity cannot be withheld on mere Payment of Gratuity Act, 1972 observed no departmental enquiry is conducted and the employee's services have not been terminated because of any misconduct. Thus there is no enabling provision by which employer can withhold the gratuity only on the basis of allegations against the employee.

Dealing with the second contention the court held that stand of the employer was not justified in recovering the amount against the items mentioned therein from the gratuity without providing any break up .Thus the deduction including payment of staff society, loan or professional tax cannot be made from the gratuity.

Management ,Virudhunagar District Central Co-operative Bank Ltd. v. *Assistant Commissioner of Labour , Madurai*,[25] decided the issue pertaining to the jurisdiction of the controlling authority to enforce the private scheme of gratuity under the Payment of Gratuity Act,1972? In this case the petitioner bank had framed a scheme *viz.*, the Group Gratuity Scheme linked with Life Insurance Corporation of India. As per the scheme the employee is entitled to get 15 days wages for every completed year of service as gratuity subject to maximum of 20 months salary. The said term emanated from the scheme in respect to payment of gratuity was included in the settlement arrived at between the bank and various employees' union, in accordance with section 12(3) of the Industrial Disputes Act, 1947. The terms of settlement also provided that for the purposes of calculation of gratuity 26 days would be reckoned ,as a month not only for arriving at the pay but also for calculating the length of service the dispute between management, Virudhunagar District Central Co-operative Bank Ltd. and it employees pertain to entitlement and computation of gratuity under the Group Gratuity Scheme (GGS) linked with Life Insurance Corporation of India as per the settlement under section 12(3) of the Industrial Disputes Act,1947 for which respondents no. 2 to 53 filed an application before the controlling authority claiming difference of gratuity. The controlling authority allowed their claim. The appellate authority directed the petitioner bank to pay arrears of gratuity to respondents 2 to 53. Against this order a writ petition was filed before the Madras High Court wherein it was challenged that controlling authority has no jurisdiction to enforce to decide the dispute regarding the interpretation of settlement in view of section 36 of the Industrial

25 2013 LLR 734.

Disputes Act. Accepting the contention the Madras High Court observed that the Payment of Gratuity Act nowhere confers any jurisdiction upon controlling authority to deal with any issue under sub-section 5 of section 4 as to whether the terms of gratuity payable under an award or agreement or contract is more beneficial to the employees than the one provided for payment of gratuity under the aforesaid Act. The court following the judgment of apex court in *Allahabad Bank* v. *All India Allahabad Bank Retired Employees Association*[26] held that the controlling authority under the Payment of Gratuity Act no jurisdiction to enforce the private scheme of gratuity.

IX CONCLUSION

The court gave a beneficial interpretation to the Employees Compensation Act. This is evident from the observations of the Supreme Court that driving the heavy vehicle for a long distance must have resulted in grave strain and stress and led to unexpected death, which may be due to heart failure. Such an accident caused solely due to nature of employment must be said to have occurred in course of such employer's trade or business. Likewise in a case of motor accident taking place during employment which resulted in death it has been held that where the widow/ dependent of the deceased initially exercises the option under the Motor Vehicles Act, but later claims of compensation deposited *suo motu* by the employer under the Workmen's Compensation Act, 1923 would not be considered to be an exercise of option under the Workmen's Compensation Act 1923 (now EC Act). A beneficial interpretation has again been given by the court where it ruled that the deceased's wife who marries after demise of the employee is entitled to compensation under the Employees Compensation Act, 1923 (EC Act).

Another positive trend is to protect the interest of workers which is evident in the area of the Payment of Gratuity Act, 1972. The benefit of interest accruing on delayed payment of gratuity to an employee, as has been contemplated under section 7(3A) of the Payment of Gratuity Act, cannot be denied to an employee, whose gratuity is regulated by some provision/instrument other than the Payment of Gratuity Act.

Quite apart from above another trend is also visible in some other cases on payment of gratuity, bonus and maternity benefit. Thus the court held that the controlling authority under the Payment of Gratuity Act, 1972 has no jurisdiction to enforce the private scheme of gratuity. Further the court ruled that employees working on contract basis cannot claim parity with the regular employees in respect to bonus. Yet there is a positive angle, namely, contract labour were given statutory bonus by the principal employer even though they were not employees /workers and are not entitled to bonus under the PB Act. Likewise it has been held that employees working on contract basis cannot claim parity with the regular employees in respect to maternity benefit. But they are entitled for statutory benefit under the Maternity Benefit Act, 1961.

---

26 2010 (124) FLR 192.