IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.706 OF 2016
WITH
ORIGINAL APPLICATION NO.792 OF 2017

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ORIGINAL APPLICATION NO.706 OF 2016

DISTRICT : PUNE

Shri Jayprakash G. Kulkarni.)
Age : 61 Yrs., Retired as Assistant Professor at)
Government Engineering College, Karad,)
District : Satara and Residing at Flat No.13, K-2,)
Gajanan Building, Aditya Nakoda Encl.II,)
Parvati Nagar, Sinhgad Road, Pune – 30.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Higher & Technical Education Dept.,)
Mantralaya, Mumbai 400 032.)

2. The Director of Technical Education,)
M.S, Mumbai having office at Dhobi)
Talao, Mahapalika Marg,)
Mumbai 400 001.)

3. The Principal.)
Government Engineering College, Karad,)
Having office at Vidhya Nagar,)
Tal.: Karad, District : Satara.)**…Respondents**

WITH

ORIGINAL APPLICATION NO.792 OF 2017

DISTRICT : SINDHUDURG

Smt. Rashmi Raoji Ajgaonkar.)
Age : 59 Yrs., Residing at Mangal Dham,)
Hindu Colony, At & Post : Kudeal,)
District : Sindhudurg.)**...Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Revenue Department,)
Mantralaya, Mumbai 400 032.)

2. The Commissioner (Revenue).)
Konkan Division, Near Sessions Court,)
Fort, Mumbai – 400 001.)

3. The Collector.)
At Oros, District : Sindhudurg.)

4. The Accountant General-I.)
101, Maharshi Karve Road, Old CEO)
Building, Mumbai 400 020.)**…Respondents**

Mr. B.A. Bandiwadekar, Advocate for Applicant in O.A.706/2016.

Mr. A.R. Joshi, Advocate for Applicant in O.A.792/2017.

Ms. S.T. Suryawanshi, Presenting Officer for Respondents in O.A.706/2016.

Ms. S.P. Manchekar, Chief Presenting Officer for Respondents in O.A.792/2017.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.03.2019

JUDGMENT

1. In both the O.As, the Applicants have challenged the impugned orders refusing the claim of gratuity on common grounds and approached this Tribunal invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Since common issues are involved, both the Original Applications are being decided by this common Judgment.

3. Facts of **O.A.706/2016** are as follows :

The Applicant joined Government service on 15.08.1991 as Assistant Professor on the probation period of two years and having completed the probation period satisfactory, was continued in the service. The Applicant tendered resignation by application dated 27.05.2005, which has been accepted by the Respondents w.e.f. 30.06.2005. As such, the Applicant was in service for 13 years, 10 months and 17 days without break or any stigma. Thereafter, he persuaded the Respondents for grant of gratuity, leave encashment and other retiral benefits, but in vain. Ultimately, in response to his letter dated 08.12.2007, the Government by order dated 9th February, 2009 rejected the claim of Applicant contending that, in view of resignation, he is not entitled to gratuity, pension or any other retiral benefits in view of Rule 46(1) of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982') which forfeits the service benefits on resignation. He was again informed by letter dated 15.03.2016 by Respondent No.2 that, as per earlier order communicated to him dated 09.02.2009, he is not entitled to retiral

benefits. The Applicant has challenged these impugned orders dated 09.02.2009 as well as 15.03.2016 contending that the same are unsustainable in law. In this behalf, principally, reliance is placed on the Judgment passed by Hon'ble High Court in Writ Petition No.2668/2002 decided with Writ Petition No.2346/2011 and Writ Petition No.1541/2008, decided on 20.06.2014. The Applicant, therefore, prayed for directions to release gratuity, leave encashment and pension.

The Applicant had also filed M.A.No.283/2016 for condonation of delay, which was allowed by this Tribunal on 31.01.2017 and O.A. was admitted for hearing.

4. Facts of **O.A.792/2017** are as follows :

The Applicant was appointed on the post of Clerk on the establishment of Collector, Sindhudurg on 01.03.1982. During the course of service, he was promoted to the post of Senior Clerk in 1995. However, on account of ill-health, he had submitted resignation on 03.08.1999 which came to be accepted by the Respondents w.e.f.17.08.1999. As such, the Applicant was in continuous service for 17 years without any stigma. After retirement, he made representation on 04.08.2016 which came to be rejected by impugned order dated 15.11.2016 contending that, in view of resignation, the Applicant forfeits the benefits of service in view of Section Rule 46(1) of 'Pension Rules 1982'. Being aggrieved by it, the Applicant has filed this application. In this O.A. also, basically reliance is placed on the Judgment of Hon'ble High Court in Writ Petition No.2668/2002 referred to above.

In this O.A. also, the Tribunal had condoned the delay in filing O.A. and O.A. was admitted for hearing.

5. In both the O.As, the common defence of the Respondents is that, in view of resignation of service, there is forfeiture of past service benefits in view of Rule 46(1) of 'Pension Rules 1982'. The Respondents, therefore, sought to justify the rejection of the claim of gratuity communicated to the Applicants by impugned orders. The factum of service and resignation of the Applicants is not in dispute. This being the position, in both the applications, the issue involved is common.

6. Heard Shri B.A. Bandiwadekar, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for Respondents in O.A.706/2016 and Shri A.R. Joshi, learned Advocate for the Applicant and Ms. S.P. Manchekar, learned Chief Presenting Officer for Respondents in O.A.792/2017.

7. At the very outset, it needs to be stated that, in both the O.As principally the claim is founded on the Judgment delivered by Hon'ble High Court in ***Writ Petition No.2668 of 2002 (Jeevan K. Patil Vs. State of Maharashtra & Ors.) decided on 20.06.2014*** filed by Judicial Officer who tendered resignation after 10 years of judicial service, but his claim for gratuity was rejected on the basis of Rule 46 of 'Pension Rules 1982'. Besides, his claim for leave encashment was also rejected being restricted to a cap of 150 days as provided in Rule 67(3) of Maharashtra Civil Services (Leave) Rules, 1981 (hereinafter referred to as 'Leave Rules 1981'). The Writ Petition was contested by the Government contending that, in view of resignation, the Petitioner forfeits the benefits of past service in view of Rule 46 of 'Leave Rules 1981'. As regard entitlement to leave in view of Rule 67 of 'Pension Rules 1982', it was restricted to maximum 150 days. In the said Writ Petition, the Petitioner had challenged the constitutional validity of Rule 46 of 'Pension Rules 1982' as well as Rule 67 of 'Leave Rules 1981'. The State also opposed the claim of the Petitioner contending that the provisions of Payment of Gratuity Act, 1972 (hereinafter referred to as 'Gratuity Act 1972') are not applicable to the Government servants having being excluded from the definition

of 'employee' as defined in 'Gratuity Act 1972'. However, the Hon'ble Bombay High Court after extensively dealing with the contentions raised by the parties rejected the contentions raised by the State Government and allowed the Writ Petitions and Rule 46(1) of 'Pension Rules 1982' as well as Rule 67(3) of 'Leave Rules 1981' has been declared unconstitutional. As such, the Judgment of Hon'ble High Court, principally, is the foundation of the claim made by the Applicants in both the matters.

8. The learned P.Os. appearing for the Respondents tried to contend that the Judgment of Hon'ble Bombay High Court in ***Jeevan Patil's*** case (cited supra) is *per-incuriam*. According to learned P.Os. for the State, the provisions of 'Gratuity Act 1972' which exclude State Government employees, but it was not brought to the notice of Hon'ble High Court, and therefore, the Judgment is *per-incuriam*.

9. The learned P.Os. further referred to the Judgment of Hon'ble Supreme Court in ***(2006) 9 SCC 643 (Union of India & Anr. Vs. Manik Lal Banerjee)*** wherein the Hon'ble Apex Court while dealing with the law of precedent held that the Judgment rendered without taking into consideration statutory provisions relevant for determining the issue renders the Judgment *per-incuriam*. The sum and substance of the defence is that the 'Gratuity Act 1972' is not applicable to the Government servant and the said fact being not brought to the notice of Hon'ble High Court in ***Jeevan Patil's*** case, the said Judgment is *per-incuriam*, and therefore, the claim based on such Judgment is not tenable.

10. Per contra, the learned Advocates for the Applicants urged that the submission advanced by the learned P.Os. that the provisions of 'Gratuity Act 1972' were not brought to the notice of Hon'ble High Court in ***Jeevan Patil's*** case, and therefore, the said Judgment is *per-incuriam* is totally erroneous and incorrect. The learned Advocates for the Applicants pointed out that the perusal of Judgment in ***Jeevan Patil's*** case makes it quite clear that the Hon'ble High

Court was conscious of the provisions of 'Gratuity Act 1972', and therefore, the submission of learned P.Os that the Judgment is *per-incuriam* is apparently misconceived and unsustainable. He further pointed out that the Hon'ble High Court has not invoked the provisions of 'Gratuity Act 1972' for grant of relief but its analogy is considered.

11. True, in so far as the applicability of payment of 'Gratuity Act 1972' is concerned, admittedly, the State Government employee does not count within the definition of employee as defined under Section 2(e) of 'Gratuity Act 1972'. It is also equally true that the payment of gratuity payable to the State Government employee is governed by 'Pension Rules 1982'.

12. I have gone through the Judgment in ***Jeevan Patil's*** case and it is obvious from the reading of the Judgment that, similar contentions were raised by the State before the Hon'ble High Court and those were dealt with by specific findings and it is logical consequences. It is very much clear from the Judgment in ***Jeevan Patil's*** case that the Hon'ble High Court was conscious of the provisions of 'Gratuity Act 1972', which are not applicable to the State Government employees. What is significant to note that the gratuity was not granted in terms of provisions of 'Gratuity Act 1972' but relief of gratuity was granted on examining the constitutional validity of Rule 46 of 'Pension Rules 1982' which forfeits past service of employee on resignation. The ratio enunciated in ***Jeevan Patil's*** case is that, when employee tendered his resignation and the same is accepted by the employer, the same would be covered by expression 'voluntary retirement' and would not be in the nature of termination of service and by entering into a contract of employment, a person does not sign a bond of slavery and consequently, the permanent employee cannot be deprived of his right to resign. It is further explicit and manifest from the Judgment of Hon'ble High Court that the relief was not granted invoking the provisions of 'Gratuity Act

1972', but its analogy was only considered for the purpose of construing Rule 46(1) as well as Rule 111 of 'Pension Rules 1982'. The Hon'ble High Court finally concluded that Rule 46 of 'Pension Rules 1982' is in clear violation of Article 14 of the Constitution of India to the extent of benefit of gratuity is not granted to a person merely because he has resigned from the service.

13. At this juncture, it would be apposite to reproduce Paragraph Nos.**8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26 & 27** from the said Judgment, which gives clear answer to the contentions raised by the learned P.O. before me.

> ***8.*** *The Pension Rules 1982 as well as the Leave Rules 1981 have been framed by the Governor of Maharashtra in exercise of powers conferred under the proviso to Article 309 to the Constitution of India. This is for the reason that the legislature has not yet made any legislation in respect of conditions of service of persons employed by the respondent- State. These Rules i.e. Pension Rules 1982 and Leave Rules 1981 made by the State are in the exercise of its legislative power. The conditions of service of person employed by the State Government is a legislative prerogative. Therefore, ordinarily, we would not interfere with the Rules so framed under Article 309 of the Constitution of India unless the same are in violation of the Constitution of India. Therefore, while examining the challenge to impugned Rule 46 (1) of the Pension Rules, 1982, and Rule 67 (iii) of the Leave Rules 1981, we would have to keep in mind the above position of law i.e. we would exercise our jurisdiction only in case the impugned Rules are ultra vires the Constitution of India.*
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> ***9.*** *It is a settled position in law that members of subordinate judiciary are controlled by the High Court under Article 235 of the Constitution of India, yet the rules regarding the conditions of service of judicial officials of the State Government is within the domain of the legislature or the Governor in exercise of legislative function (see B. S. Yadav v/s. State of Haryana 1980 (suppl.) SCC 524).*
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> ***10.*** *We shall first deal with the petitioner's challenge for not being paid gratuity on account of their resignation from service after having served the State Government for over a period of 10 years. The respondent State has refused to grant gratuity to the petitioners who have resigned from service on the basis of the following two Rules:-*

(a) Rule 9 –Unless the context otherwise requires, the terms defined in this Chapter are used in the various sets of the Maharashtra Civil Services Rules, in the sense here explained:-
Rule (2) to (36) .....
Rule (37) Pension includes a gratuity.
Rule (38) to (54) .....

(b) Rule 46 – Forfeiture of service on resignation:-

(1) Resignation from a service or a post entails forfeiture of past service.
(2) to (5) ……..

15. *The contention of the respondent State is that in view of the above Rule 46 (1) of the Pension Rules 1981 – a resignation from a service or post, would result in forfeiture of past service. Consequently, no gratuity is payable to the petitioner as the same is to be paid for services rendered by the employee. Moreover, it is submitted that the etymology of the word 'gratuity' itself suggests that it is a gratuitous payment given to an employee on discharge, superannuation or death resulting in termination of service. Therefore, it is contended by the respondent State that the petitioners have no legal right to claim gratuity.*

16. *Although the word 'gratuity' was originally considered to be in realm of charity, yet, as observed by the Apex Court in Balbir Kaur and Another v/s. Steel Authority of India, 2000 (6) SCC 493, the payment of gratuity is no longer in the realm of charity but a statutory right provided in favour of the employee under the provisions of Gratuity Act, 1972. Therefore, such a right in favour of the employee for gratuity casts an obligation on the employer to pay the gratuity. Although, we are not in this case per se concerned with the Gratuity Act, 1972, the fact that the concept of the 'gratuity' is no longer considered to be act of charity cannot be lost sight of even while considering the Pension Rules 1981. Moreover, the only reason put forward by the respondent State for not granting gratuity is the mandate of Rule 46(1) of Pension Rules 1982 i.e. resignation entails forfeiture of past service. It would be wise to bear in mind the observation of the Supreme Court in Central Inland Water Transport Corporation v/s. B. M. Ganguly, AIR 1986 SCC – 1579 wherein at paragraph 111 it has observed that:*

> *"By entertaining into a contract of employment, a person does not sign a bond of slavery and a permanent employee cannot be deprived of his right to resign."*

Therefore, as there is a right available to the employer State to remove or compulsorily retire a person from service for misconduct, insolvency or inefficiency in terms of Rule 19 of the Pension Rules 1982 a corresponding right to resign is inherent in the employee. It needs no emphasis that the State should endeavor to be a model employer.

17. *The respondent State's submission is that there is no violation of Article 14 of the Constitution of India as the classification done of employees who have resigned as a separate class from others is an intelligible differetia/classification.*

18. *Although the above classification may satisfy one of the tests for reasonable classification, the differentiation must have rational nexus to the object to be achieved. A person having an unblemished record when he resigns from service is no different from a person with an unblemished record who retires from service. A person can voluntarily retire after putting in 20 years of service and he is entitled to gratuity and pension for life. On the other hand, a person who desires to leave service before completing 20 years of service has no other option but to resign. On resignation, he is admittedly not entitled to get pension. The State Government would be within its rights in insisting that it would pay pension to its employee only after his retirement upon completing at least 20 years' service. A person retiring from service after having put in less than 20 years' is thus already put to a terrible disadvantage. There is, therefore, no justification for the State to deny him even gratuity, when Parliament has directed all other employees to pay gratuity to their employees who resigns after putting in 5 years' service. In fact Section 5 of the Gratuity Act, 1972 confers power on the Government to exempt any employer/employee from the provision of the Gratuity Act, 1972 specifically provides that such exemption may be granted only if the conditions of service are not less favourable than those under the Gratuity Act, 1972. Therefore, the employees not covered by Gratuity Act, 1972 cannot, therefore, be treated as an inferior class compared to those governed by Gratuity Act, 1972. Both the classes of employees have rendered services and nothing has been shown to us as to what objective is sought to be achieved by the impugned Rule save and except to hold employees who seek to resign hostage to it. As observed by the Apex Court in Central Inland Water Transport Corporation (supra) a contract of employment is not a bond for slavery. Thus non-granting of gratuity to employees who have resigned by virtue of Rule 46(1) of the Pension Rule 1982 is clearly arbitrary and in violation of Article 14 of the Constitution of India.*

19. *Moreover, in the present facts, Rule 46(1) of the Pension Rules 1982 provides for forfeiture of past service on a person resigning resulting in the respondent State not giving gratuity to the petitioners. This even though it does not allege any misconduct or inefficiency on the part of the petitioners. Therefore, not granting of gratuity would mean imposing penalty upon the petitioners without just cause. Normally only dismissal or removal from a post would entail forfeiture of past service and consequently inter alia the right to receive gratuity. In this case, the petitioners have rendered services for more than 10 years and yet are being denied their legitimate rights to gratuity without the State following the principle of natural justice and when in fact, there is not even a whisper on part of the respondent State of any misconduct and/or inefficiency on the part of any of the petitioners before us. Therefore, non-granting of gratuity on giving of resignation by any employee after 5 years of service does amount to imposing the penalty on the petitioner without due process of law and arbitrarily. Therefore, Rule 46(1) of the Pension Rules 1982 is in clear violation of Article 14 of the Constitution of India to the extent the benefit of gratuity is not granted to a person merely because he has resigned from the service.*

20. *In any case, Section 14 of the Gratuity Act, 1972 inter-alia provides that the Gratuity Act, 1972 shall have effect notwithstanding anything contained in any other enactment. Section 4 of the Gratuity Act, 1972 inter alia provides that the Gratuity should be paid to a person who has resigned from service provided that the person resigned has completed 5 years of service i.e. qualifying service. The Pension Rules 1982 do not specifically provide that gratuity payable for service rendered would also be forfeited. The respondent State only relied upon Rule 46(1) of Pension Rules 1982 to conclude that as past services are forfeited, any benefit or payments payable to the resigning employee for past service rendered would also stand forfeited. This interpretation completely ignores provisions of Gratuity Act, 1972 which provides for payment of gratuity even on resignation. The principles laid down in Gratuity Act, 1972 is to be read into the Pension Rules 1982 particularly in the absence of any provisions prohibiting the payment of gratuity on resignation in the Pension Rules 1982. The respondent State is expected to be a model employer and non-payment of gratuity merely because a person has resigned from its service can hardly be considered as a conduct of a model employer.*

21. *The respondent State submits that the Gratuity Act, 1972 is inapplicable and in support place reliance upon the decision of the Gujarat High Court in the matter of Junagadh District Panchayat (supra). The respondent therein was an employee of a Panchayat and was governed by*

Service Rules made by the State Government. However, the respondent therein had applied to the Controlling Authority under the Gratuity Act, 1972 for payment of gratuity. The Controlling Authority therein without considering the fact that the respondent was an employee of the State and would be governed by specific rules applied the provisions of Gratuity Act, 1972. It was in the above circumstances the Court held that the orders of the controlling authority is without jurisdiction. To the same effect as the Gujarat High Court decision in Junagadh District Panchayat (supra) is the Punjab & Haryana High Court decision in Municipality Committee, Tohane (supra).

22. *In this case we are not invoking the provisions of the Gratuity Act, 1972 and the recovery provisions mentioned therein. We are only invoking the principle for the grant of gratuity as found in Gratuity Act 1972 for the purposes of construing Rule 46(1) of the Pension Rules 1982.*

23. *In view of the above, it would only be appropriate to read down Rule 46(1) of the Pension Rules, 1982 so as not to apply the same to the payment of gratuity to a person only because he has resigned from service after rendering service of over 5 years to the State Government. The gratuity which is paid to an employee is paid in respect of services rendered. The petitioners herein have admittedly rendered services and their right to gratuity accrues after having completed 5 years of service as is evident from compassionate pension/ gratuity found in Rule 111(1) of Pension Rules, 1982 which reads as under:-*

> *"111-Retirement Gratuity/ Death Gratuity:-*
> *(1) A Government servant, who has completed five year's qualifying service and has become eligible for service gratuity or pension under rule 110, shall, on his retirement, be granted retirement gratuity equal to one-forth of his pay for each completed six monthly period of qualifying service, subject to a maximum of 16 ½ times the pay."*
> *(2) to (5) … … ...*

The above provision further supports our construction of Rule 46(1) of the Pension Rules 1982. It is only then that Rule 46(1) of the Pension Rules 1982 would be fair and equitable to satisfy the rigours of Article 14 of the Constitution of India otherwise it would be manifestly arbitrary. It would also do away with the stigma of punishment on the petitioner for not receiving gratuity on termination of service by resignation.

26. *This submission of the respondent/State is not acceptable as the challenge is to the constitutionality of the Rule. An employee who resign*

cannot and should not be treated differently from an employee who superannuates in respect of the encashable credit of leave. The classification of resigned employee as a different class from one who is superannuated to the extent of encashable credit of leave is concerned is a classification done without any basis. In any case the respondent State has not been able to point out any objective being achieved by such classification. Thus Rule 67(3) of Leave Rules 1981 is manifestly arbitrary as being violation of Article 14 of the Constitution of India to the extent it limits the benefit to half of such leave to its credit subject to a cap of 150 days on enjoying the benefit of earned leave standing to their credit. This also does entail an element of penalty being imposed upon the employee for resigning from service. Therefore, for the reasons indicated by us herein above while holding that Rule 46(1) of the Pension Rules 1982 has to be read down, we find that Rule 67(3) of the Leave Rules 1981 is unconstitutional.

27. *Accordingly, we allow the petition by holding that Rule 46 (I) of the Pension Rules 1981 have to be read down so as to entitle the employees of the State Government to Gratuity in case they resign after completing 5 years of service. We declare that Rule 67(3) of the Leave Rules 1982 providing for capping on the credit of leave which could be encashed being half of such leave to their credit subject to a cap of 150 days to an employee who has resigned from service as unconstitutional.*

14. It is thus manifest that the Hon'ble High Court was conscious of the provisions of 'Gratuity Act 1972' and indeed, considered the provisions of the said Act from the point of analogy to interpret Rule 4(6)(1) and Rule 111 of 'Pension Rules 1982' and finally concluded that it would be unjust to deny the benefit of gratuity to the employee who has rendered service for more than five years. Therefore, the submission advanced by the learned P.Os that the Judgment in ***Jeevan Patil's*** case is *per-incuriam* holds no water.

15. ***Manik Lal's*** case referred by the learned P.O. arises from claim made by railway employee for gratuity and it was principally based upon the benefit of gratuity granted to another railway employee Pritam Singh earlier. Manik Lal was paid 16 and half months emoluments comprising of basic salary and 20% towards

death-cum-retirement gratuity as per Railway Service (Pension) Rules, 1993. However, one Pritam Singh who was similarly situated obtained benefit of gratuity in terms of provisions contained in 'Gratuity Act 1972' in terms whereof the element of D.A. was calculated at the rate of 125% of basic salary. The Special Leave Petition filed by Union of India in ***Pritam Singh's*** case was dismissed by Hon'ble Supreme Court holding that "This is not a fit case for our interference under Article 136 of the Constitution. Hence, the appeal is dismissed." Thus, principally, relying on the dismissal of Special Leave Petition, Manik Lal filed proceeding before Central Administrative Tribunal (CAT) which was disposed of by CAT with direction to Union of India to consider Manik Lal's case and accordingly, Union of India considered the claim inter-alia holding that the case of Manik Lal is not governed by the provisions of 'Gratuity Act 1972' but by the provisions of Railway Services (Pension) Rules, 1993. Being aggrieved by it, Manik Lal has filed O.A. before the CAT, which was allowed in view of benefits granted to Pritam Singh, as similar benefit ought to have been given to Manik Lal. The Writ Petition was filed by Union of India was dismissed by Hon'ble High Court. Therefore, the Union of India took up the matter before the Hon'ble Supreme Court and the S.L.P. was allowed. It is in that context, the Hon'ble Supreme Court held that summary dismissal of appeal in ***Pritam Singh's*** case cannot be considered to a binding precedent and held that the Tribunal as well as Hon'ble High Court committed error as ***Pritam Singh's*** case was evidently rendered *per-incuriam* because the statutory provisions relevant for determining the issue had not been taken into consideration. There could be no dispute about the dictum laid down by Hon'ble Supreme that if the Judgment is rendered without taking into consideration statutory provisions for determining the issue, it is *per-incuriam*.

16. However, in so far as the Judgment in ***Jeevan Patil's*** case is concerned, it would be audacious to contend that the provisions of 'Gratuity Act 1972' were

not considered by the Hon'ble High Court rendering the Judgment *per-incuriam*. It is quite explicit from the relevant Paragraphs extensively reproduced from the Judgment that the provisions of 'Gratuity Act 1972' were on mind and considered from the point of its analogy to interpret Rules 46 and 111 of 'Pension Rules 1982' and finally concluded that the benefit of gratuity to the public servant who tendered resignation after five years of service cannot be withheld and to that extent, Rule 46 of 'Pension Rules 1982' held arbitrary and unconstitutional. This being the position, the contentions raised by learned P.Os that the Judgment given in ***Jeevan Patil's*** case is *per-incuriam* has to be rejected.

17. Needless to mention that this Tribunal is bound by the Judgment of Hon'ble High Court and hardly in anything is left open to this Tribunal to take different view, which is in fact not at all permissible in view of law of precedent and Ratio Decidendi. The Ratio Decidendi means the reason or the principle upon which the case has been decided by the higher Courts. The Ratio Decidendi can be ascertained by analysis of facts.

18. It would be useful to refer certain decisions governing law of precedent. The Hon'ble Supreme Court in ***(1990) 4 SCC 207 (Krishna Kumar Vs. Union of India)*** in Para No.20 held as follows :

> *"**20**. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidenti has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge - made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it."*

19. It would be useful to refer the Judgment of Hon'ble Bombay High Court in ***2009 (4) Maharashtra Law Journal 483 (Rajeshwar s/o Hiraman Mohurle vs. State of Maharashtra)*** wherein it has been held as follows :

> *"The dictum of the Supreme Court in the case of Honda Siel Power Products Ltd. Vs. CIT, 2007(12) SCC 596, that "rule of precedent is an important aspect of legal certainty in the rule of law", is a principle of great significance in the system of administration of justice. One of the essential rudiments of law of precedent is consistency in the judicial decision making. The doctrine of precedent has been understood in two respects. Firstly, that the phrase means merely that precedents reported, may be cited, or may be followed by the Courts. Secondly, the strict meaning of the phrase is that precedent not only have great authority but must in certain circumstances be followed. By the development of law, the doctrine of precedent in India has been given strict meaning subject to its limitations and the law stated by the coordinate benches of the higher Courts is expected to be followed with all its rigours but certainly subject to the rule of law and satisfying the principle of ratio decidendi. It is an accepted precept of administration of justice to follow this rule of precedent. Generally known exceptions to the rule of precedent are principles of ratio decidendi, sub-silentio and stare decisis. It is the ratio understood in its correct perspective that is made applicable to a subsequent case on strength of a binding precedent. Ratio decidendi is thus the reason for deciding as reasoning is the soul of decision making process. Every settled principle of law has to be rationally understood with reference to the facts of the case in which such principle of law is stated. In other words, facts make the law and this should always be kept in mind while applying the principles stated and reasoning in support thereof. A little difference in the facts or additional facts may make a lot of difference in the precedential value of a decision. SEB vs. Pooran Chandra Pandey, 2007 (11) SCC 92] Ratio decidendi can act as the binding or authoritative precedent and reliance placed on mere general observations or casual expression of the Court is not of much avail. [Girnar Traders vs. State of Maharashtra, 2007 (7) SCC 555].*
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> *2. Occasion may arise where earlier judgment of a coordinate Bench is not in conformity with law or has ignored statutory provisions and or the law declared by the Supreme Court which is binding in terms of Article 141 of the Constitution of India and thus may not be a binding precedent for the reason it being per incuriam or hit by principle of stare decisis."*

20. Commenting on the doctrine of stare decisis, the Hon'ble Supreme Court in Minerva Mills Ltd. V. The Union of India((1980) 3 S.C.C. 6251, observed as follows:

> *"Certainty and continuity are essential ingredients of the rule of law. Certainty in the applicability of law would be considerably eroded, and suffer a serious set back, if the highest court in the land were readily to over rule the view expressed by it in the field for a number of years. It would create uncertainty, instability and confusion if the law propounded by this Court on the faith of which numerous cases have been decided and many transactions have taken place, is held to be not the correct law after a number of years.*
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> *But, the doctrine of stare decisis, should not be regarded as a rigid, and inevitable doctrine, which must be applied at the cost of justice. There may be cases where it may be necessary to rid the doctrine of its petrifying rigidity. The Court may, in an appropriate case, overrule a previous decision taken by it, but that should be done only for substantial and compelling reasons".*

21. Suffice to say, Tribunal is bound to follow the decision of Hon'ble High Court having attained the finality as a binding precedent. One of the basic principles of administration of justice is that, cases should be decided alike. Doctrine of precedent is applicable to proceedings filed under Section 19 of Administrative Tribunals Act, 1985. The necessary corollary of aforesaid discussion, therefore, leads me to conclude that the Applicant in both the O.As are entitled to the gratuity and Respondents are under obligation to pay the same, as may be permissible in view of their period of service to be calculated in terms of Rule 111 of 'Pension Rules 1982'.

22. In so far as O.A.706/2016 is concerned, in addition to gratuity, the Applicant has also claimed all service benefits, particularly, regular pension on the ground that, if Rule 46(1) as declared unconstitutional in terms of Judgment of Hon'ble High Court in ***Jeevan Patil*** (supra), the Respondent cannot deny the liability to pay regular pension, as the Applicant has completed qualifying service of 10 years in terms of Rule 30 and Rule 110 of 'Pension Rules 1982'.

23. In so far as the issue of regular pension, on tendering the resignation is concerned, I find myself unable to accept the submission advanced by the

learned Advocate for the Applicant in this behalf. Significant to note that, Rule 46(1) of 'Pension Rules 1982' has been declared unconstitutional to the extent of benefit of gratuity only as per Para 19 of the Judgment in ***Jeevan Patil*** (supra). This being the position, the Applicant's demand for pension on the basis of Judgment of Hon'ble High Court is misconceived and has to be rejected.

24. In so far as leave encashment is concerned, the Hon'ble High in ***Jeevan patil*** (supra) held that an employee who resigned cannot be treated differently from an employee who superannuates in respect of the encashable earned leave at his credit. The Hon'ble High Court, therefore, held that Rule 67(3) of 'Leave Rules 1981 which caps encasement of leave subject to maximum of 150 days is unconstitutional. This being the position, resultantly, the Applicant in O.A.706/2016 could be entitled to leave encashment of the leaves at his credit without restricting the same to 150 days. The Respondents are, therefore, liable to grant leave encashment accordingly.

25. The upshot of aforesaid discussion leads me to sum-up that the Applicant in O.A.792/2017 is entitled to the gratuity whereas the Applicant in O.A.706/2016 is entitled to gratuity and leave encashment of the earned leave at his credit without capping to maximum 150 days and the O.As are deserve to be allowed. Hence, the following order.

O R D E R

In O.A.706/2016 :-

(A) The Original Application is allowed partly.

(B) The Applicant is entitled to receive the gratuity.

(C) The Respondents are directed to pay the amount of gratuity to the Applicant to be calculated in accordance to 'Pension Rules 1982' and the same shall be paid to him within two months from today.

(D) The Applicant is also entitled to leave encashment and Respondents are directed to extend the benefit of leave encashment of earned leave as per his credit without capping the same to 150 days and the amount payable be paid within two months from today.

(E) The claim of pension of the Applicant is rejected.

(F) No order as to costs.

In O.A.792/2017 :-

(A) The Original Application is allowed.

(B) The Applicant is entitled to receive the gratuity.

(C) The Respondents are directed to pay the amount of gratuity to the Applicant to be calculated in accordance to 'Pension Rules 1982' and the same shall be paid to him within two months from today.

(D) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 18.03.2019
Dictation taken by :
S.K. Wamanse.
D:\SANJAY WAMANSE\JUDGMENTS\2019\3 March, 2019\O.As.706.2016 with O.A.792.2017.Pension.doc