

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.Nos.15706, 15840 & 15843 OF 2018

Between:

Electronics Corporation of India Limited, Hyderabad

... **Petitioner**

And

The Appellate Authority under Payment of Gratuity Act, 1972,
and Deputy Chief Labour Commissioner & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.Nos.15706, 15840 & 15843 OF 2018****% 03.06.2024****Between:**

Electronics Corporation of India Limited, Hyderabad

... Petitioner**And**\$ The Appellate Authority under Payment of Gratuity Act, 1972,
and Deputy Chief Labour Commissioner & others**... Respondents**

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> Head Note:

! Counsel for the Petitioner : Sri G.Vidya Sagar**^ Counsel for Respondents** : Sri P.V.Krishnaiah

? Cases Referred:

- (1) Writ petition (M/S) No.891 of 2016
- (2) Judgment dated 05.03.2021 in W.A.No.443 of 2019
- (3) Order dated 15.11.2021 in SLP No.(S) 16004-16005 of 2021
- (4) 1983 (1) SCC 304

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P.Nos.15706, 15840 & 15843 OF 2018****COMMON ORDER:**

Heard learned Senior Designate Counsel Mr.G.Vidya Sagar, representing the learned counsel appearing on behalf of the petitioner on record and Mr.P.V.Krishnaiah, learned counsel appearing on behalf the respondents.

PRAYER:**W.P.No.15706 of 2018:**

2. **The petitioner approached the court seeking prayer as under:**

"...to issue an order, direction or Writ more particularly one in the nature of Writ of Certiorari or any other appropriate writ after calling for the records quash the order passed in P.G. Appeal Case Nos.9 of 2018 – 304 of 2018, dated 16.04.2018 by the Appellate Authority under Payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (C), Vidyanagar, Hyderabad, including the order of the Controlling Authority under P.G.Act, 1972 and Assistant Labour Commissioner (Central), ATI Campus, Vidyanagar, Hyderabad passed in P.G.Case No.48/42/2014-E3/E2 and batch, dated 10.11.2017 and pass..."

W.P.No.15840 of 2018:**3. The petitioner approached the court seeking prayer as under:**

"...to issue an order direction or Writ more particularly one in the nature of Writ of Certiorari or any other appropriate writ after calling for the records quash the order passed in P.G. Appeal Nos.3 of 2018, 4 of 2018, and 5 of 2018, dated 16.04.2018 by the Appellate Authority under Payment of Gratuity Act 1972 and Deputy Chief Labour Commissioner (C) Shivam Road, ATI Campus, Vidyanagar, Hyderabad including the order of the Controlling Authority under P.G. Act, 1972 and Assistant Labour Commissioner (Central) ATI Campus, Vidyanagar, Hyderabad passed in P.G. Case No.48/39/2014-E3/E2 and batch, dated 10.11.2017 and pass..."

W.P.No.15843 of 2018:**4. The petitioner approached the court seeking prayer as under:**

"...to issue an order direction or Writ more particularly one in the nature of Writ of Certiorari or any other appropriate writ after calling for the records quash the order passed in P.G. Appeal Nos.6 of 2018, 7 of 2018 and 8 of 2018, dated 16.04.2018 by the Appellate Authority under Payment of Gratuity Act 1972 and Deputy Chief Labour Commissioner (C) Shivam Road, ATI Campus, Vidyanagar, Hyderabad including

the order of the Controlling Authority under P.G. Act 1972 and Assistant Labour Commissioner (Central), ATI Campus Vidyanagar Hyderabad passed in P.G. Case No. 48/95/2015-E3/E2 and batch, dated 10.11.2017 and pass..."

5. PERUSED THE RECORD:

A) This Court vide its interim orders dated 01.05.2018 in I.A.No.1 of 2018 in W.P.No.15706 of 2018 passed orders observing as under:

"The petitioner is Electronics Corporation of India Limited, Hyderabad, is a Central Public Sector undertaking. Respondents retired from the petitioner- Corporation on attaining the age of superannuation on various dates prior to May, 2010. Respondents filed applications before the 2nd respondent for a direction for payment of difference of gratuity amount on the ground that they are entitled to gratuity with the ceiling limit of Rs.10.00 lacs w.e.f. 01.01.2007 instead of Rs.3.50 lacs.

The 2nd respondent-Controlling Authority under the Payment of Gratuity Act, 1972, allowed the claim of the respondents on the premise that they are entitled to gratuity as they are governed by the ECIL Gratuity Trust Rules including the ceiling limit as applicable to the ECIL employees. That the petitioner-ECIL has already paid the gratuity at the ceiling limit of Rs.3.50 lacs, the 2nd respondent directed to pay the remaining amounts of enhanced rates of gratuity with interest at 10% as prescribed by the Government of India notification No.S.O.874 (4), dated 01-10-1984. Aggrieved by the same, writ petition was preferred by the petitioner being WP No.1253 of 2018 and this Court disposed of the same with an observation to avail the remedy of filing appeal to the 1st respondent. It is stated that the petitioner-ECIL filed appeal before the 1st respondent-

appellate Authority and the 1st respondent, by the impugned order dated 16-04-2018 confirmed the order of the 2nd respondent-Controlling Authority. Hence, the writ petition.

Sri P. Vidya Sagar, learned senior counsel appearing for the petitioner-ECIL submitted that though the Gratuity Act was amended by the Parliament vide Payment of Gratuity (Amendment) Act, 2010, (Act 15 of 2010), substituting the words "Rs. 10 lacs in place of Rs.3.5 lacs" in sub-Section 3 of Section 4 of the Gratuity Act, 1972, the Ministry of Labour and Employment issued notification dated 24-05-2010 in SO No.1217 (E), fixing the effective date of the amendment w.e.f. 24-05-2010 and the enhanced ceiling limit of gratuity of Rs.10 lacs comes into force w.e.f. 24-05-2010 only, whereas the respondents retired from service of the petitioner-ECIL prior to 24.05.2010 are not eligible for benefit to enhanced ceiling of gratuity at Rs. 10 lacs and therefore, both the authorities below erred in construing this aspect of the matter.

Sri PV Krishnaiah, learned counsel appearing for the respondents-employees contended that the Board of Directors in its meeting held on 21.04.2009 confirmed various conditions mentioned in the DPE OM dated 26-11-2008, wherein the gratuity ceiling is raised to Rs.10 lacs from the existing Rs.3.5 lacs w.e.f, 01-01-2007 and it is an afterthought of the petitioner-ECIL not to implement the ceiling of gratuity from 01-01-2007, but from 24-05-2010 and it is per se illegal. It is also contended that when once the Gratuity Act is amended to include Rs.10 lacs as ceiling, the employer has no choice, but to confirm to the statutory provision.

Pima facie, the petitioner-ECIL is contending that payment of enhanced gratuity ceiling from 01-01-2007 is not recommended by the Board. The issue that is required to be considered is whether the enhanced ceiling of gratuity at Rs.10 lacs is to be paid from 01-01-2007 as per the guidelines contained in DPE OM dated 26-11-2008 or from 24-05-2010, the date when the amendment to Gratuity Act came into force. Except stating that the petitioner-ECIL ought

to have confirmed to the DEP OM dated 26.11.2008, no material is placed to compel the petitioner to pay the respondents-employees the enhanced ceiling rate of gratuity amounts. The matter requires counter and further hearing.

In the circumstances, there shall be interim suspension of the impugned order."

B) Office Memorandum dated 09.02.2009 of Joint Secretary to the Government of India, read as under:

"The undersigned is directed to refer this Department's O.M. of even No. dated 26.11.2008 regarding pay revision of Board level, below Board level executives and Non Unionized Supervisors in CPSEs w.e.f. 01.01.2007. Para (1) of Annex. III to the said O.M. provides that Performance Related Pay (PRP) has been directly linked to the profits of the CPSEs/ Units and performance of the executives.

2. Illustration of methodology for implementation of PRP with reference to MoU rating of CPSE and performance rating of individual executives has been given by way of examples in para 6.2.3 (I) (ix) of the report of the 2nd Pay Revision Committee. Report of the Committee is available on the website of this Department www.dpe.nic.in.

3. The above methodology be followed by the CPSEs for payment of PRP for individual executives and non-unionized supervisors."

C) Counter affidavit filed on behalf of the respondents 3 to 298, in I.A.No.1 of 2018 in W.P.No.15706 of 2018, in particular, paras 38, 39, 56, 60, 61, read as under:

“38) I respectfully submit that it is also very pertinent to mention that the Petitioner management paid increased gratuity for three died employees viz., (1) Mr. K. Mallesh (Staff No.104471): (ii) Mr. Kadimi Susheela (Staff No.97544); and (iii) Mr. M. Rami Reddy (Staff No. 100307), who ceased from the rolls of the Company much before the amendment i.e., 24/05/2010, the date of amendment of the Payment of Gratuity Act.

39) I respectfully submit that the Petitioner management cannot discriminate other employees, who retired from service between 01/01/2007 and 23/05/2010 being the model and enlightened employer.

56) I respectfully submit that, admittedly, the Payment of Gratuity Act not only is applicable to Public Sector Undertakings but also Private Sector. Therefore the effect of amendment made to the Gratuity Act may be relevant to Private Sector employees with regard to ceiling limit from Rs.3.5 lakhs to Rs.10 lakhs. Therefore, there is no nexus or relations with regard to amendment of Section 4 of the Gratuity Act, enhancing ceiling from Rs.3.5 lakhs to Rs.10 lakhs for payment of gratuity to the petitioners who were in service as on 01.01.2007 and who retired from service after 01.01.2007. In other words notwithstanding the fact that Gratuity Act was amended, enhancing ceiling from Rs.3.5 lakhs to Rs.10 lakhs subsequent to 01.01.2007 or all the employees not only in ECIL but also other Public Sector

Undertakings, who were in service on 01.01.2007 and who retired after 01.01.2007 are entitled to the enhanced ceiling of Rs. 10 lakhs, inasmuch as the Second Pay Revision Commission recommended enhanced gratuity ceiling of Rs.10 lakhs, which is part of a revision of pay scales, and which came into effect from 01.01.2007 as per OM dated 26.11.2008. Therefore, the Management cannot deny the implementation of the Second Pay Revision Commission, as approved by the Government of India, in respect of gratuity, while implementing other recommendations pertaining to pay revision and benefits, inasmuch as the gratuity and other benefits are part and parcel of the revised pay scales. Therefore there is no other alternative to the Management, except to implementing Second the Pay Revision Commission's recommendations with regard to enhanced gratuity ceiling.

60) I respectfully submit that without any recommendations from the Pay Revision Commission, the Government itself independently increased the ceiling from Rs.3.5 lakhs to Rs.10 lakhs by amending the Gratuity Act, which is for general purpose but not with regard to the Second Pay Revision Commission's recommendations. Therefore, the Second Pay Revision Commission's recommendations should be implemented from 01.01.2007, inasmuch as the Government of India and other concerned authorities in Toto accepted and implemented the Second Pay Revision Commission's recommendations as stated above, gratuity is

also a part of revised package. Therefore looking from any angle of the case the action on the part of the ECIL Management in denying enhanced ceiling of gratuity as recommended by the Second Pay Revision Commission is highly arbitrary, illegal, discriminatory and unconstitutional, violating Articles 14, 21 and 300A of the Constitution of India.

61) I respectfully submit that insofar as my knowledge is concerned, all the managements of the public sector undertakings paid enhanced ceiling of gratuity to their employees who were in service as on 01.01.2007 and who retired from service after 01.01.2007 even before the amending the Gratuity Act, inasmuch as amending the Gratuity Act is nothing to do with regard to implementation of the Second Pay Revision Commission's recommendations, inasmuch as the Government of India in Toto accepted and approved and decided to implement the Second Pay Revision Commission's recommendations in Toto and issued consequential orders to that effect. Therefore, the contention of the writ petitioners' management that the employees who retired from service after coming into effect of the amendment of the Gratuity Act, increasing the ceiling from Rs.3.5 lakhs to Rs.10 lakhs, only entitled and others who retired from service from 01.01.2007 to 23.05.2010 are not entitled is absolutely unsustainable, misconceived and untenable."

6. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed in support of the present three writ petitions, is as under:

a) The Petitioner Corporation is a Central Public Sector undertaking and the workmen working in the petitioner Corporation are governed by the Payment of Gratuity Act, 1972. As per terms of Payment of Gratuity Act, 1972 and as per ECIL Gratuity Fund Rules, the respondents herein who were working as officers, on attaining the age of superannuation have been paid the eligible gratuity.

b) The respondents retired from service on various dates prior to May, 2010 and gratuity was paid in terms of Payment of Gratuity Act, 1972 r/w. ECIL Gratuity Fund Rules and the respondents received the amounts with no protest.

c) Later on, the revision of pay scales of the employees who had retired from the petitioner corporation on or after 01.01.2007, were extended as decided by the Board of Director and approved by the Government of India, vide proceeding dated 01.05.2009 and gratuity of all these employees were paid duly taking into account the enhancement of salaries.

d) However, the respondents herein have put forth applications during 2014-2015 claiming difference of gratuity paid to those employees who retired on or before 01.01.2007.

e) The Assistant Commissioner of Labor and the Controlling Authority by an order dated 10.11.2017 allowed the claim of the respondents herein and the same was challenged before the Appellate Authority vide P.G. Appeal No's. 9 of 2018 to 304 of 2018. The Appellate Authority vide its order dated 16.04.2018 rejected the appeal and confirmed the order of the Controlling Authority.

f) Subsequently, the Payment of Gratuity Act, 1972 has been amended vide Payment of Gratuity Act (Amendment) Act, 2010 substituting Rs.10 Lakhs in place of 3.5 Lakhs in 4(3) of the Payment of Gratuity Act, 1972, and thus had come into force w.e.f 24.05.2010, but the respondents have retired from services prior to 24.05.2010 and hence are not entitled to difference of gratuity.

g) However, as per the Office Memo dated 26.11.2008 issued by Ministry of Heavy Industries and Public Enterprises, Central Public Sector Enterprises, the organizations which are not able to adopt revised pay scales (2007), may give an increase on

the basic pay plus D.A. drawn in the pre-revised scales as on 01.01.2007 depending upon their affordability.

h) On contrary, the Board of Directors of the Petitioner Corporation had decided to not to revise the gratuity in accordance with Office Memo dated 26.11.2008 and decided to maintain ceiling limit of gratuity at Rs.3.5 Lakhs till the Gratuity Act, 1972 is amended.

i) Subsequently, the Petitioner Corporation issued circular No.2068/2010-11 dated 12.11.2010 amending the ECIL Employees Gratuity Fund Rules for enhancing the gratuity from Rs. 3.5 Lakhs to Rs.10.00 Lakhs effective only from 24.05.2010.

j) Aggrieved by the same, the respondents have preferred an appeal before the Controlling Authority, aggrieved by the same, the petitioner Corporation had filed W.P. No.7128 of 2018 and this Court vide its orders dated 30.09.2016 disposed the Writ Petition.

k) Aggrieved by the orders of W.P. No. 7128 of 2018, W.A. No. 1339 of 2016 and 1335 of 2016 were filed and this Court allowed the appeal and set aside the order of the learned single Judge and referred the matter back to Controlling Authority.

l) Aggrieved by the same, petitioner's Corporation has preferred an Special Leave Petition (SLP) (C) No. 6939-68940 of 2017 before the Hon'ble Supreme Court of India and the same had been dismissed vide its order dated 10.03.2017.

m) The Controlling Authority vide its order dated 24.11.2017 held that the respondents are entitled to gratuity over and above Rs.3.50 Lakhs in terms of O.M. dated 26.11.2008. Aggrieved by the order, the petitioner had filed P.G. Case No's 9 of 2018 – 304 of 2018 and the Appellate Authority vide its orders dated 16.04.2018 confirmed the order of the Controlling Authority. Aggrieved by the said orders, the present writ petition is filed.

7. The learned Senior Counsel Mr.G.Vidya Sagar, appearing on behalf of the petitioner mainly put forth the following submissions:

(i) The Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises issued O.M. dated 26-11-2008 revising the scale of pay of the Board Level and below Board level Executives and non-Unionized Supervisors in the Central Public Sector Enterprises. While revising the pay scales it specified at Para No. 13 that the ceiling of the gratuity of the Executives and

Non-Unionized Supervisors of CPSEs would be raised to Rs.10.00 lakhs w.e.f. 1-1-2007. Para No. 16 of the said O.M. specifies that the CPSE concerned has to bear the additional financial implications on account of pay revision from their own resources and no budgetary support will be provided. Para No. 17 of the O.M. further specifies that the Board of Directors of each CPSE would be required to consider the proposal of pay revision based on their affordability to pay and submit the same to the Administrative Ministry/Department for approval. The concerned Administrative Ministry with the concurrence of its Financial Advisor will issue the Presidential Directive.

(ii) The Government of India issued O.M. dated 2-4-2009 reiterating that the benefits mentioned in the O.M. dated 26-11-2008 and O.M. dated 9-2-2009 are to be viewed as a total package. It was also reiterated that the ceiling limits mentioned in the O.M. dated 26-11-2008 and 9-2-2009 are maximum permissible limits and the lower limits can be provided in the Presidential directives depending upon affordability, capacity to pay and sustainability of concerned CPSEs (Para Nos. 3 & 4 of O.M. dated 2-4-2009). The above O.Ms would clearly reveal that the O.M. dated 26-11-2008 and 9-2-2009 are only proposals and the same cannot be treated as a Presidential directives issued by the concerned administrative ministry.

(iii) In terms of Para Nos. 16 & 17 of the O.M. dated 26-11-2008, the Writ Petitioner considered the same in their 226th Board Meeting held on 21-4-2009. Under Item No. 19 of the Agenda, it was resolved that the ECIL will continue to maintain the ceiling limit on gratuity at Rs.3.5 lakhs till the Gratuity Act is amended. The said Board of Directors passed resolution and the same was communicated to the Administrative Ministry i.e., Government of India, Department of Atomic Energy. In terms of Para No. 17 of the O.M. dated 26-11-2008, the proposal of the Board of Directors of ECIL was approved by the competent Authority for revision of pay scales and the same was communicated vide letter dated 1-5-2009. The letter dated 1-5-2009 issued by the Department of Atomic Energy, Government of India, being a Presidential Directive have been followed by ECIL and the Gratuity Ceiling Limit is retained at Rs.3.5 lakhs till amendment is carried out in the Payment of Gratuity Act.

(iv) The Parliament vide Payment of Gratuity (Amendment) Act, 2010 amended Section 4 of the Payment of Gratuity Act substituting Ten Lakhs Rupees only (Rs.10.00 lakhs) for the words 'three lakhs and fifty thousand rupees only. The said amendment was notified vide Notification dated 24-5-2010 appointing 24-5-2010 as the date on which the amendment shall come into force. Accordingly, the ECIL in its 234th meeting of the Board of Directors held on 13-8-2010 enhanced the ceiling limit of the Gratuity from Rs.3.5 lakhs to Rs.10.00 lakhs. Accordingly, ECIL Employees Gratuity Fund

Rules have been amended and notified vide circular dated 12-11-2010. Thus, the ceiling limit for payment of gratuity for ECIL employees is raised from Rs.3.5 lakhs to Rs.10.00 lakhs effective from 24-5-2010.

(v) All the Unofficial Respondents in the Writ Petitions have retired from service before 24-5-2010 and they have been paid the Gratuity subject to a maximum ceiling limit of Rs.3.5 lakhs.

(vi) The Authority and the Appellate Authority under Payment of Gratuity Act proceeded on the presumption that the O.M. dated 26-11- 2008 is to be treated as an Award in terms of Section 4 (5) of Payment of Gratuity Act and further the O.M. dated 26-11-2008 is a Presidential directive and mandatory on part of the ECIL to enhance the ceiling limit of gratuity to Rs. 10.00 lakhs w.e.f. 1-1-2007.

(vii) The Hon'ble Supreme Court in Suresh Chandra Singh Vs. Fertilizer Corporation of India (2004 (1) SCC 592), interpreted the instructions and guidelines issued by the Government of India and held that the directives would be issued by the Administrative Ministry in the name of the President, whereas the other instructions issued by the Department of Public Enterprises are only advisory, which the Board of Directors of the Public Sector Undertakings concerned may in their discretion adopt or not.

(viii) The Hon'ble High Court of Delhi in State Farm Corporation Vs. P.S. Gupta (W.P. (C) No. 907 of 2013) with regard to identical issue and the interpretation of the O.M. dated 26-11-2008 held that the discretion is vested with the concerned CPSEs and the Board of Directors have to take into consideration the affordability with regard to the benefits specified in O.M. dated 26-11-2008 R/w. O.M. dated 8.2.2009 as reiterated in O.M. dated 2-4-2009. The Hon'ble Court remanded the matter back to the Board of Directors recording that the affordability of grant of enhanced gratuity was not considered by the Board of Directors before sending the proposals for approval to the concerned Ministry i.e., Ministry of Agricultural and disposed of the matter accordingly.

(ix) The O.M. dated 26-11-2008 came up for consideration before the Hon'ble High Court of Uttarakhand in Nawab Khan Vs. Union of India (W.P. (M/s.) No. 891 of 2016 and batch, dated 13-09-2019. The learned single Judge of the Uttarakhand High Court interpreting the O.M. dated 26-11-2008 held that the O.M. dated 26-11-2008 shall not come within the definition of either an Award or Contract. However proceeded to give the benefit of enhanced limit of gratuity on the ground that all other PSUs have given the said benefit; therefore, there is no justification in not extending the same and it is violative of Article 14 of Constitution of India.

(x) The Hon'ble High Court of Uttarakhand also referred to the judgment of Suresh Chandra Singh Vs. Fertilizer

Corporation of India (2004 (1) SCC 592) and held that the employees of the different Corporations cannot be treated alike, since every Corporation will have to take into account separate circumstances so as to formulate its policy and consequential argument that there is discrimination of the Appellants vis-a-vis the employees of the other Corporations also cannot be accepted. (Para No. 7 of the Judgment). Therefore, the scheme formulated by other Corporations cannot be a ground to contend the violation of Article 14 of Constitution of India. Further, the Hon'ble Supreme Court in Suresh Chandra Singh reiterated that the O.M. issued by the Department of Public Enterprises is only advisory in nature and broad discretion is given to the Corporations for implementation of the O.M. by taking a policy decision by the respective Public Sector Undertakings. It was also reiterated that the O.M. being an administrative direction, the Courts cannot issue a writ to enforce such administrative instructions which have no force of law. Thus, the Judgment of the Hon'ble High Court of Uttarakhand is contrary to the law laid down by the Hon'ble Apex Court with regard to the O.Ms issued by the Director of Public Enterprises, which are held only advisory in nature but not mandatory. Thus, the Judgment of the Hon'ble High Court of Uttarakhand cannot be made applicable to the facts of the present case.

(xi) In view of the above, the O.M. dated 26-11-2008 is to be treated as advisory in nature and the same has no binding

force and it would not attract Section 4 (5) of the Payment of Gratuity Act.

(xii) The ECIL have framed the Gratuity Rules which prescribed the maximum limit of Rs.3.5 lakhs for Payment of Gratuity. In terms of Section 4A of Payment of Gratuity Act, the Corporation has obtained Insurance towards liability for Payment of Gratuity and therefore it has to make contributions towards Gratuity Fund. Therefore, the Corporation has amended the Payment of Gratuity Rules in its 234th meeting of the Board of Directors held on 13.8.2010 enhancing the ceiling limit from Rs.3.5 lakhs to Rs.10.00 lakhs in Term Assurance under Group Gratuity Cash Accumulation Policy with LIC. Thus, any enhancement prior to the amendment of the Gratuity Rules, cannot be treated as right accrued in favour of the employees of the Writ Petitioner under Section 4 (5) of the Payment of Gratuity Act, 1972. Thus, the findings of the Authorities under Payment of Gratuity Act that the O.M. dated 26-11-2008 is mandatory and directory and thereby allowing the claim of the employees over and above Rs.3.5 lakhs is contrary to the provisions of the Section 4 of the Payment of Gratuity and the law declared by the Hon'ble Apex Court that the O.M. dated 26-11-2008 issued by the Director of Public Enterprises is only an advisory in nature and do not have any statutory force in law. Hence, the orders of the authorities under Payment of Gratuity Act are liable to be set aside and the Writ Petitions are to be allowed.

Basing on the aforesaid submissions the learned Senior Designate Counsel contended that the writ petition has to be allowed as prayed for.

DISCUSSION AND CONCLUSION:

8. It is the specific case of the petitioner that the O.M. dated 26.11.2008 is to be treated as Advisory in nature and the same has no binding force and it would not attract sections 4, 5 of the Gratuity Act.

9. The question for consideration before this court in the present case is whether the Department of Public Enterprises O.M. dated 26.11.2008 is a mandatory direction to all the public sector undertakings to follow or it is to be treated as Advisory in nature.

10. **Sub section 5 of Section 4 of Payment of Gratuity Act, 1972 reads as under:**

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

11. **Paragraph 13 of the Office Memorandum dated 26.11.2008, reads as under:**

“Gratuity:

The ceiling of Gratuity of the Executives and Non-unionised Supervisors of the CPSEs would be raised to Rs.10,00,000/- w.e.f. 01.01.2007.”

12. The Office Memorandum dated 02.04.2009 issued by the Joint Secretary to the Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises, dealing with Revision of Scales of Pay w.e.f. 01.01.2007 for Board level and below Board level Executives and non unionised supervisors in Central Public Sector Enterprises. Referring to O.Ms. dated 26.11.2008 and 09.02.2009 regarding Pay Revision of Executives and Non-unionised Supervisors of C.P.S.C. Executives (Central Public Sector Enterprises) w.e.f. 01.01.2007 subsequent to issuance of O.M. dated 26.11.2008 at clause 2 sub clause (ii) sub clause (vii) and clause 3 of the said Memorandum dated 02.04.2009 observed as under:

“Sub: Revision of scales of pay w.e.f. 01.01.2007 for Board level and below Board level executives and Non-Unionised Supervisors in Central Public Sector Enterprises (CPSEs) – Report of the Committee of Ministers thereon.

The undersigned is directed to refer to this department's O.Ms of even number dated 26.11.2008 and 09.02.2009 regarding pay revision of Executives and Non-unionised Supervisors of CPSEs w.e.f. 1.1.2007. Subsequent to issue of O.M. dated 26.11.2008, the Government constituted a Committee of Ministers to look into the demands raised by CPSE executives of Oil and Power Sectors.

2. The Government, after due consideration of the recommendations of the Committee of Ministers have decided further as follows:

i) Benefit of merger of 50% DA with Basic Pay for fitment purpose: The benefit of merger of 50% DA with Basic Pay w.e.f 01.01.2007 effectively amounting to 78.2%, would be allowed for the purpose of fitment and pay fixation in the revised pay scales (para 2 (i) of DPE O.M. dated 26.11.2008)

ii) Superannuation Benefit: The ceiling of 30% towards superannuation benefits would be calculated on Basic Pay plus DA instead of Basic Pay alone. Any superannuation benefit will be under a "defined contribution scheme" and not under a "defined benefit scheme", CPSEs that do not have superannuation scheme, may develop such scheme and obtain the approval of their Administrative Ministry. However, no other superannuation benefit can be granted outside this 30% ceiling (para 12. Annex IV(v) of O.M. dated 26.11.2008 refers)"

vii) Other demands: Government has decided on the basis of the recommendations of the Committee of Ministers that no other change need be made in the O.M. dated 26.11.08 and 09.02.09 issued by the DPE regarding revision of pay scales of Executives and non-unionised supervisors of CPSEs.

3. Government has also decided that benefits under this O.M. read with the earlier decision as conveyed vide O.M. dated 26.11.2008 and 09.02.2009 has to be viewed as a total package. It has also been decided that the pay revision

package as communicated by earlier O.Ms. along with the above modifications would be applicable to all the CPSEs.”

13. A bare perusal of the above Office Memorandum dated 02.04.2009, in particular sub clause (vii) of clause 2 and clause 3 clearly indicates that the Government after due consideration of the Recommendations of the Committee of Ministers had decided that no other change need be made in the O.M. dated 26.11.2008 and 09.02.2009 issued by the DPE regarding Revision of Pay Scales of Executives and Non-unionised Supervisors of Central Public Sector Enterprises and the Government has also decided that benefits under this O.M. read with the earlier decision as conveyed vide O.M. dated 26.11.2008 and 09.02.2009 has to be viewed as a total package. It has also been decided that the pay revision package as communicated by earlier O.Ms., along with the above modification would be applicable to all the CPSEs.

14. The Office Memorandum dated 26.11.2008 referred to and extracted above, had been issued in pursuance to the Office Memorandum dated 08.12.2006 of the Government of India and a bare perusal of the same indicate that the Second Pay Revision Commission for Revision of Pay Scales and other emoluments of

Central Public Sector Enterprises Executives has been set up and a resolution also had been passed dated 30.11.2006 and clause 2.2.3 of the said resolution indicates that the committee will work out a comprehensive pay package for the categories of the employees of CPSEs mentioned at clause 2.2.1 which refers to i) Board level functionaries, ii) below Board level Executives, iii) Non-unionised Supervisory Staff and the committee will make the recommendations to the Government within a period of 18 months and it will have its Head Quarters in Delhi, and further that the decision of the Government on the Recommendations of the Committee will take effect from 01.01.2007 and the committee will be serviced by the Department of Public Enterprises.

15. Clause (k) of the said recommendations deals with Superannuation benefits and the same very clearly indicates that a positive recommendation had been made by the said committee constituted vide Gazette Notification No.2(10)/06-DPE(WC) dated 01.12.2006 indicating that for the purpose of paying Gratuity or Post Superannuation benefit, the committee recommends that there should not be any upper ceiling limit, and further it is observed that pension and medical benefits as superannuation

benefits are aimed at ensuring the loyalty of the Executives to the CPSEs and extended tenure of services. The committee further recommended that these two benefits can be extended to those Executives who superannuate from the CPSE and who have put in a minimum of 15 years of service in the CPSE prior to superannuate.

16. This Court takes note of the fact as borne on record as per the resolution dated 30.11.2006 of the Ministry of Heavy Industries and Public Enterprises that the decision of the Government on the recommendations of the committee will take effect from 01.01.2007 and also takes note of the fact borne on record that clause 3 of the report of the committee of Ministers thereon of O.M. dated 02.04.2009 in clear and express terms indicates that the Government has also decided that the benefits under this O.M. read with the earlier decision as conveyed vide O.M. dated 26.11.2008 and 09.02.2009 has to be viewed as a total package and it has also been decided that the pay revision package as communicated by earlier O.Ms. along with the above modification would be applicable to all the CPSEs.

17. A bare perusal of the material document dated 01.05.2009 of the Government of India, Department of Atomic Energy vide No.5/4(2)/2009-PSU/71 addressed to the Chairman and Managing Director, Electronics Corporation of India Limited, ECIL Hyderabad, i.e., the petitioner herein filed by the respondents 3 to 298, clearly refers that proposals for revision of scales of pay and pre-requisite for Board level posts and below Board level posts including Non-unionised Supervisors on IDA scales of pay w.e.f. 01.01.2007, indicates that the competent authority has approved the proposal for revision of pay scales for Board level posts and below Board level posts including Non-unionised Supervisors in ECIL subject to the following conditions:

- (i) The pay revision of Board level Executives and below Board level Executives and Non-unionised Supervisors of ECIL would be strictly in accordance with the guidelines contained in O.M. dated 26.11.2008 and O.M. dated 02.04.2009 and the revised pay scales will be effective from 01.01.2007.

18. A bare perusal of the Office Memorandum dated 09.02.2009 of the Central Government also indicates specific instructions to be followed by CPSE for payment of PRP (Performance related Pay) for individual Executive and Non-unionised Supervisors w.e.f. 01.01.2007 as per the Office Memorandum dated 26.11.2008.

19. This Court opines that Gratuity is a right of an employee which he gets after his superannuation or his heirs get after his death after retirement or any such contingency as given in Section 4 of the Act and it is for gratuitous service which an employee has put in. It is the right of an employee not a bounty as held by the Apex Court in R.K. Kapoor Vs. Director of Inspection (Painting and Publication) Income Tax and another reported in 1995 (1) UPLBEC page 89.

20. **The issue whether the Office Memorandum dated 26.11.2008 has any force of law, and whether it comes within the definition of Award, Agreement or Contract as given under Sub Section (5) of Section 4 of the Act, had come up for consideration in a batch of writ petitions, writ petition (M/S) No.891 of 2016 in "Nawab Khan Vs. Union of India and others and batch, before the High Court of**

Uttarakhand at Nainital, paragraph 33, 35, 36, 37, 38, 39, 40, 41, 43 of the said Judgment is extracted hereunder:

“33. The office memorandum dated 26.11.2008 is definitely to be seen in the light of sub-section (5) of Section 4 of the Act. The tenor and tone of the office memorandum also shows that it is not merely advisory in nature as paragraph no. 17 of the office memorandum dated 26.11.2008 says that as far as pay scales are to be considered, the same have to be implemented by way of a presidential directive. In other words, only the implementation of office memorandum dated 26.11.2008 so far as it deals with the pay scales of employees is concerned depends upon a Presidential Order. There is no such rider as far as payment of gratuity is concerned. In paragraph no. 13 of the office memorandum dated 26.11.2008 when it speaks about the gratuity, it only says that the ceiling of gratuity of the executives and non-unionised supervisors of the PSEs is to be increased from Rs.3,50,000/- to Rs. 10,00,000/- and it would be effective from 01.01.2007. Nothing more or nothing less.

35. The only reason assigned by the PSE for denying the enhanced gratuity to its employees who have retired between 01.01.2007 to 24.03.2010 is lack of fund and the financial health of the PSE. All the same, though financial health could have been a reason for denying the enhanced pay scales to its employees, it has not been done and the new pay scales have been implemented. Therefore, PSE has no valid reasons for denying the enhanced gratuity to its retired employees on the ground of its so called financial condition, which has in any case not been explained.

36. Even assuming therefore for the sake of argument, that the office memorandum dated 26.11.2008 is only advisory in nature and has no binding force, which can be an argument against the petitioners as submitted by the learned counsel for the employer Sri Vikas Anand, yet under the facts and circumstances of the case and in the light of overwhelming evidence which this Court has before it, such as, that this PSE

has accepted all other recommendations contained in the office memorandum dated 26.11.2008, that all other PSEs have given all benefits as per the aforesaid office memorandum, (including the enhanced payment of gratuity), the benefit denied to a narrow class of employees of this PSE and that too only those who have retired between 01.01.2007 to 24.05.2010, is neither just nor equitable, This is also in violation of Article 14 of the Constitution of India. What the employer has done is not fair. Respondent is a public sector unit. It is supposed to be a model employer and it should not have denied the just and legitimate claim of the petitioners.

37. Having heard the learned counsel for the parties at length, this Court is of the opinion that the order of the appellate authority cannot be sustained in law and is liable to be set aside. The petitioners are liable to be given the enhanced gratuity in terms of the office memorandum dated 26.11.2008.

38. Payment of gratuity is to be given as per the Payment of Gratuity Act, 1972. The maximum limit which has been fixed under sub-section (3) of Section 4 of the Act is the one which is to be notified by the Central Government and it is true that at the relevant time even at the time when the petitioners had reached the age of superannuation, the notification which was existing under the Payment of Gratuity Act, 1972 prescribed a maximum gratuity of Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only). This amount has already been given to the petitioners. The petitioners claim Rs. 10,00,000/- (Rupees Ten Lakh only) in terms of sub-section (5) of Section 4 of the Act. After deducting Rs.3,50,000/- (Rupees Three Lakh Fifty Thousand only) from the sum of Rs. 10,00,000/- (Rupees Ten Lakh only), the remaining gratuity amount shall be given to each of the petitioner.

39. Considering the facts and circumstances of the case and in view of the fact that when a delayed payment of gratuity is made, under sub-section (3-A) of Section 7 of the Act, it has to be given along with an interest as fixed by the Government of India.

40. This Court has been informed by the learned Senior Counsel for the petitioners that as per the Notification dated 1st October, 1987 where the gratuity is not paid within the specified period, the amount has to be paid along with ten per cent simple interest per annum.

41. Notification dated 2 October, 1987 reads as under: -

**“Notification under section 7(3-A)
Rate of Interest specified
Notification No.S.O.874 (E), dated 1st October,
1987**

In exercise of the powers conferred by sub-section (3-A) of section 7 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies ten per cent per annum as the rate of simple interest payable for the time being by the employer to his employee in cases where the gratuity is not paid within the specified period.

This notification shall come into force on the date of its publication in the Official Gazette.”

43. In view of the above, writ petitions stand disposed.”

This Judgment of the High Court of Uttarakhand in batch of writ petitions, writ petition (M/S) No.891 of 2016 in Nawab Khan Vs. Union of India and others and batch had been upheld by the Judgment of the Apex Court dated 25.07.2022 in SLP preferred by Central Electronic Limited Vs. Nawab Khan.

21. The Division Bench of High Court of Karnataka at Bengaluru vide its Judgment dated 05.03.2021 in Writ Appeal No.443 of 2019 preferred against the order of the Single Judge, dated 11.01.2019 passed in W.P.Nos.36530-708/2016 and W.P.No.53708/2013 dealing with a similar issue as the present case at paras 31, 32, 33, 34, 35, 36, observed as under:

“31. It has been held that Article 14 strikes at arbitrariness and the basic principle which informs both under Articles 14 and 16 is equality and inhibition against discrimination. The respondents cannot be permitted to discriminate between the employees of BEML and other similarly situated employees who have attained the age of superannuation from other Public Sector Undertakings under the Ministry of Defence. Therefore, the action of the respondents in not granting enhanced gratuity is certainly violative of Articles 14, 16 and 21 of the Constitution of India.

32. The Hon'ble Supreme Court in the aforesaid land mark judgment has held that the pension/gratuity is neither a bounty nor a matter of grace depending upon the sweet will of the employer, nor an ex-gratia payment. It is a payment for the service rendered. It is a social welfare measure rendering socio- economic justice to those who in their hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch.

33. In the considered opinion of this Court, pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution as held by the Hon'ble Supreme Court. The most practical *raison d'etre* for pension is the inability to provide for oneself due to old age.

34. In the present case, the basis of the recommendations of the expert body which is the Pay Commission it was resolved by the Board of Directors of BEML to grant revised pay scales as well as revised gratuity and revised pay scales have already been granted w.e.f., 1.1.2007 but only revised gratuity has not been granted to the employees of BEML. As has already been stated, the employees working in other Public Sector Undertakings under the same Ministry of Defence have been granted the benefit of revised gratuity. Therefore, as the criterion laid down under the Office Memorandum dated 26.11.2008 is fulfilled, the question of denying the benefit to the appellants does not arise.

35. In the present case, BEML has already granted enhanced pay scales based upon the recommendations of the Pay Commission, which is an expert body w.e.f., 1.1.2007 and the ceiling limit under the Payment Of Gratuity Act has already been enhanced to Rs.1.0 lakhs w.e.f, 24.5.2010. All employees, who have retired after 24.5.2010 have been paid enhanced gratuity to the tune of Rs.10 lakhs and have also been paid revised pay scales w.e.f, 1.1.2007. The petitioners are the only employees who have retired w.e.f., 1.1.2007 up to 24.5.2010 have been singled out only because formal orders were not passed by the Government of India/ presidential order was not passed. In the considered opinion of this Court, the appellants cannot be discriminated vis-à-vis the other employees of other Public Sector Undertakings, who were standing on the same footing. The employees of other Public Sector Undertakings under the Ministry of Defence, to be more specific HAL, have been paid the gratuity on a higher rate keeping in view the recommendations under the Office Memorandum dated 26.11.2008. Therefore, the appellants are also entitled for payment of enhanced gratuity at par with the other employees, who have been granted the benefit of revised pay scale along with revised gratuity. In the net result, the writ appeal is allowed.

36. The learned Single Judge, while disposing of the writ petitions and while remanding the matter back to BEML, has arrived at a conclusion that in case the employees are held entitled for enhanced gratuity i.e., Rs.10 lakhs, they shall also

be entitled for interest at the rate of 10% p.a., from the date of entitlement till the amount is actually paid. Therefore, in the considered opinion of this Court, the appellants/employees shall be entitled for enhanced gratuity along with interest at the rate of 8.5% p.m., from the date of entitlement till the amount is actually paid. The order passed by this Court be complied with within a period of 90 days from the date of receipt of the certified copy of the judgment.

With the aforesaid, writ appeal stands allowed. No order as to costs."

22. The SLP No.(S) 16004-16005 of 2021 preferred by the Respondent No.3 in the said Writ Appeal No.443 of 2019, aggrieved by the final judgment and order dated 05.3.2021 in W.A.No.443 of 2019 was dismissed by the Apex Court vide its order dated 15.11.2021 observing as under:

"We are not inclined to interfere with the impugned judgment on the question of payment of Gratuity however with consent we clarify that the interest on the shortfall in payment of Gratuity would be payable at the rate of 8.5% per annum and not at the rate of 8.5% per month."

23. Paragraph No.17 of the Office Memorandum dated 26.11.2008 is extracted hereunder:

"17. Issue of Presidential Directive, effective date of implementation and payment of allowances etc.: The revised pay scales would be implemented by issue of Presidential Directive in respect of each CPSE separately by the concerned Administrative Ministry/Department. The

revised pay scales will be effective from 1.1.2007. The payment of HRA, perks and allowances based on the revised scales will, however, be from the date of issue of Presidential Directive. The Board of Directors of each CPSE would be required to consider the proposal of pay revision based on their affordability to pay and submit the same to the Administrative Ministry/Department for approval. The concerned Administrative Ministry with the concurrence of its Financial Advisory will issue the Presidential Directive. A Copy of the Presidential Directive issued to the CPSEs concerned may be endorsed to the Department of Public Enterprise."

24. Sub Section (5) of Section 4 of the Act, is extracted hereunder:

"Nothing in this section shall affect the right of an employee to receive better terms of Gratuity under any Award or Agreement of Contract with the employer."

25. It is borne on record that the Office Memorandum dated 26.11.2008 is based on the recommendations of PRC, which had arrived at its finding and recommendations, after having a broad agreement with all the stakeholders on the subject. Therefore, this Court opines that the Office Memorandum dated 26.11.2008 falls under the definition of an Agreement.

26. This Court opines that the Officer Memorandum dated 26.11.2008 paragraph No.17 extracted above, indicates that the Revised Pay Scales would be implemented by issue of Presidential

Directory in respect of each CPSE separately by the concerned Administrative Ministry/Department. But there is no such stipulation or a rider as far as payment of Gratuity is concerned at paragraph No.13 of the Office Memorandum dated 26.11.2008 which reads as under:

Gratuity:

The ceiling of Gratuity of the Executives and Non-unionised Supervisors of the CPSEs would be raised to Rs.10,00,000/- w.e.f. 01.01.2007.

27. A bare perusal of the contents of the documents referred to and extracted above, i.e., Office Memorandum dated 08.12.2006 the resolution dated 30.11.2006, the Office Memorandum dated 02.04.2009 sub clause (vii) of Clause 2 and Clause 3, and The Government of India Letter dated 01.05.2009 addressed to the petitioner herein vide No.5/4(2)2009-PSU/71 clearly indicates, that it is the decision of the Government of India that the Office Memorandum dated 26.11.2008, and 09.02.2009 has to be viewed as a total package and the said O.Ms. would be applicable to all the CPSEs. Hence it cannot be said that the

Office Memorandum dated 26.11.2008 is only Advisory in nature.

28. A bare perusal of the material on record also indicates that Bharat Electronics Limited, (BEL) and several other Public Sector undertakings under the Ministry of Defence had received the enhanced Gratuity. Sub Section (5) of Section 4 of the Gratuity Act protects the right of an employee to receive better terms of Gratuity under any Award or Contract with the employer.

29. A careful reading of Paragraph 17 and Paragraph 13 of the Office Memorandum dated 26.11.2008 clearly indicates that the Office Memorandum dated 26.11.2008 has to be definitely understood in the light of sub Section (5) of Section 4 of the Act.

30. **The Apex Court in the Judgment reported in 1983 (1) SCC 304 in DS Nakara Vs. Union of India, at paras 13 to 15, observed as under:**

"13. The other facet of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not to be held identical with the doctrine of classification. As was noticed in *Maneka Gandhi case* in the earliest stages of evolution of the constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids

discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in *E.P. Royappa v. State of T.N.*, it was held that the basic principle which informs both Article 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para 85)

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

14. Justice Iyer has in his inimitable style dissected Article 14 in *Maneka Gandhi* case as under at SCR p. 728: (SCC p. 342, para 94)

That article has a pervasive processual potency and versatile quality, egalitarian in its soul and allergic to discriminatory diktats. Equality is the antithesis of arbitrariness and *ex cathedra ipse dixit* is the ally of demagogic authoritarianism. Only knight-errants of 'executive excesses' - if we may use current cliché-can fall in love with the Dame of despotism, legislative or administrative. If this Court gives in here it gives up the ghost. And so it is that I insist on the dynamics of limitations on fundamental freedoms as implying the rule of law: Be you ever so high, the law is above you.¹

Affirming and explaining this view, the Constitution Bench in *Ajay Hasia v. Khalid Mujib Sehravardi* held that it must, therefore, now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary must necessarily involve negation of equality. The Court made it explicit that where an act is arbitrary it is implicit in it that it is unequal both according to political logic and

constitutional law and is, therefore, violative of Article 14. After a review of large number of decisions bearing on the subject, in *Air India v. Nergesh Meerza* the Court formulated propositions emerging from an analysis and examination of earlier decisions. One such proposition held well established is that Article 14 is certainly attracted where equals are treated differently without any reasonable basis.

15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question."

31. This Court opines that the controlling authority under P.G. Act, 1972 heard the petitioner as well as respondents herein and came to the conclusion that the claim of the respondents 3 to 298 is based on the Office Memorandum dated 26.11.2008 read with Sub Section (5) of Section 4 of the Act, and the controlling authority passed the orders in P.G. Case No.48/42/2014-E3/E2 and batch dated 10.11.2017 in favour of the respondents 3 to 298. The said orders dated 10.11.2017 had been carried in Appeal by the petitioner herein before the Appellate Authority, under payment of Gratuity Act, 1972 and Deputy Chief Labour Commissioner (C), Sivam Road, ATI Campus, Vidyanagar Hyderabad in P.G. Appeal Case No.9 of 2018-304 of 2018, and the Appellate Authority also

confirmed the orders of the controlling authority vide its orders dated 16.04.2018.

32. This Court opines that there is no justification in continuing the stay granted by this Court on 01.05.2018 since it is borne on record that payment of enhanced Gratuity ceiling from 01.01.2007 had been recommended and the same is evident from the documents listed hereunder:

- (i) The letter dated 01.05.2009 of the Government of India No.5/4(2)/2009-PSU71 addressed to the petitioner herein and also as per the contents of the Office Memorandum dated 09.02.2009 issued by the Government of India, Ministry of Heavy Industries and Public Enterprises Department of Public Enterprises.
- (ii) The Office Memorandum dated 02.04.2009 issued by the Joint Secretary to the Government of India, Ministry of Heavy Industries and Public Enterprises, Department of Public Enterprises,
- (iii) The Office Memorandum dated 26.11.2008 referred to and extracted above, had been issued in pursuance to the Office Memorandum dated 08.12.2006 of the Government of India,

- (iv) A bare perusal of the material document dated 01.05.2009 of the Government of India, Department of Atomic Energy vide No.5/4(2)/2009-PSU/71 addressed to the Chairman and Managing Director, Electronics Corporation of India Limited, ECIL Hyderabad,
- (v) **The reliance placed by the petitioner referring to the judgment reported in 2004 (1) SCC 592 and the plea on the point that employees of different corporations cannot be treated alike is negated as per sub Section (5) of Section 4 of the Gratuity Act which protects the right of an employee to receive better terms of Gratuity under any Award or Contract with the employer and the Gratuity paid to the employees on the strength of Office Memorandum dated 26.11.2008 would fall in the said sub section.**

33. Taking into consideration the aforesaid facts and circumstances of the case and the view of the Court in the judgments reported referred to and extracted above, and which are again enlisted hereunder:

- (a) writ petition (M/s) NO.891 of 2016 in "Nawab Khan Vs. Union of India and others",
- (b) Division Bench of High Court of Karnataka at Bengaluru vide its Judgment dated 05.03.2021 in W.A.No.443 of 2019,

(c) SLP No.(S) 16004-16005 of 2021 dated 15.11.2021,
and

(d) 1983 (1) SCC 304 in "DS Nakara Vs. Union of
India",

this Court is of the considered opinion in the light of the discussion as arrived at as above and the conclusion as arrived at as above, that the respondents 3 to 298 are entitled for the benefit flowing out of the Office Memorandum dated 26.11.2008 including the benefit of enhanced Gratuity and warrants no interference in so far as the orders impugned in the present writ petitions are concerned.

34. Accordingly, the W.P.Nos. 15706, 15840 & 15843 of 2018, stands dismissed duly vacating the interim order granted by this Court dated 01.05.2018. However there shall be no order as to costs.

Miscellaneous petitions, if any pending, shall stand closed.

SUREPALLI NANDA, J

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr*

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P.Nos.15706, 15840 & 15843 OF 2018
(L.R.copy to be marked)

Date: 03.06.2024.

Yvkr