SUDHIR CHANDRA SARKAR

v.

TATA IRON & STEEL CO. LTD. AND OTHERS.

March 27, 1984

[D.A. DESAI, A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Retiring Gratuity Rules, 1937—Rule 1(g)—Definition of 'Retirement' scope of —Employee after working for 29 years left service by resignation which was accepted by employer—Whether employee could be said to have retired from service.

Retiring Gratuity Rules, 1937—Rule 10 validity of. Part of Rule 10 which confers absolute discretion on employer to pay gratuity, even if it is earned, at its absolute discretion, is ineffective and enforceable.

Industrial Employment (Standing Orders) Act, 1946—Section 3—Certified Standing Orders—Nature of—Whether form part of contract of service—Whether their breach can be repaired by civil suit.

Words and Phrases—"Gratuity"—Concept of, Gratuity is a retiral benefit as measure of social security ; it is not gratuitous but has to be earned by long and continuous service ; it can be recovered through civil suit.

The appellant who resigned from service of the respondent company after serving for over 29 years was not paid retiring gratuity by the respondent, even when the appellant had become eligible for it under the relevant gratuity rules styled as the Retiring Gratuity Rules, 1937 (Gratuity Rules for short). The appellant filed a suit in the Court of Subordinate Judge for recovering the amount of gratuity. The Subordinate Judge decreed the suit. The High Court allowed the appeal filed by the respondent. Hence this appeal. The respondents submitted ; (1) that since the appellant did not retire from the service but left the service by resigning the post, he was not eligible for gratuity under Rule 6 of the Retiring Gratuity Rules, 1937 ; (2) that under Rule 10 the retiring gratuity was payable at the absolute discretion of the respondent and could not be claimed as a matter of right by the appellant even if he had become eligible for it ; and (3) that claim to gratuity could not be enforced in the civil court.

Allowing the appeal,

HELD : Rule 6(a) which prescribed the eligibility criterion for payment of retiring gratuity provides, *inter alia*, that every permanent uncovenanted employee of the Company, will be eligible for retiring gratuity. The expression 'retirement' has been defined in Rule 1(g) to mean 'the termination of service by reason of any cause other then removal by discharge due to misconduct'. It is admitted that the appellant was a permanent uncovenanted employee of

A the Company paid on monthly basis and he rendered service for over 29 years and his service came to an end by reason of his tendering resignation which was unconditionally accepted. It is not suggested that he was removed by discharge due to misconduct. Unquestionably, therefore, the appellant has, within the meaning of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6. [332D-F]

B According to the High Court, the service conditions of the appellant were governed by the Works Standing Orders of the respondent. No exception has been taken to this finding. These Works Standing Orders were framed and certified under the Industrial Employment (Standing Orders) Act, 1946. The Act was a legislative response to the *laissez faire* rule of hire and fire at sweet will. It was an attempt at imposing statutory contract of service between two parties unequal to negotiate, on the footing of equality. The intendment C underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that Standing Orders certified under the Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties.[333E-334G]

D *Western India Match Company Ltd.* v. *Workman* ; [1974] 1 SCR 434. *Workman of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd.* v. *Management and Ors* ; [1973] 3 SCR 587 at 612. *Workmen in Buckingham and Carnatic Mills Madras* v. *Buckingham and Carnatic Mills* : [1970] 1 Labour Law Journal 26 at 29. *M/s. Glaxo Laboratories (I) Ltd.* v. *The Presiding Officer, Labour Court, Meerut & Ors;* [1984] 1 SCC 1. *Agra Electricity Supply Co. Ltd.* v. *Sri Allodin & Ors;* [1970] 1 SCR 806, referred to.

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Upon a combined reading of Standing Order (S.O.) 54 along with Rule 5 and 6(a) of the Gratuity Rules, it becomes distinctly clear that payment of gratuity was an express or statutory conditions of service governing the relationship between the appellant and the respondent. Therefore, it would be obligatory F upon the respondent to pay gratuity on retirement to the appellant. If the respondent refuses to pay or discharge its statutory obligation, the claim can be enforced by a civil suit. The High Court was of the opinion that in view of Rule 1[illegible] of the Gratuity Rules, recovery of gratuity cannot be enforced by a civil suit. But upon an industrial dispute being raised, the Industrial Tribunal may be in a position to award the gratuity as a matter of right even under the G existing rules. In reaching this conclusion the High Court overlooked the effect of the certified Standing Orders and the inter-relation between the Gratuity Rules and S.O. 54. When under 1946 Act, an obligation is cast on the employer to specifically and precisely lay down the conditions of service, Sec. 13(2) subjects the employer to a penalty if any act is done in contravention of the Standing Orders certified under the Act. A facet of collective bargaining is that any settlement arrived at between the parties would be treated as incorporated in the contract of service of each employee governed by the settlement. Similarly, H certified Standing Orders which statutorily prescribe the conditions of service shall be deemed to be incorporated in the contract of employment of each employee with his employer. If the employer commits a breach of the contract of employment, the same can be enforced or remedied depending upon the

relief sought by a civil suit. The jurisdiction of civil court amongst others is determined by the nature of relief claimed. If the relief claimed is a money decree by enforcing statutory conditions of service, the civil court would certainly have jurisdiction to grant the relief. [335F-337B] A

Labour Law Text and Materials by Paul Davies and Mark Freedland p.233 and System of Industrial Relations in Great B itain p. 58-59, referred to. B

In the instant case, the appellant filed the suit alleging that he was entitled to payment of gratuity on completition of service for the period prescribed. He alleged it and the High Court accepted it as a condition of service. Its breach would give rise to a civil dispute and civil suit would be the only remedy. In the case of workmen governed by the Industrial Disputes Act, 1947, Sec. 33(c)(2) may provide an additional forum to recover monetary benefit. It is not suggested that appellant was a workman governed by the Industrial Disputes Act. The High Court was, therefore, in error in holding that the remedy was only by way of an industrial dispute and not by a civil suit. [337C-D] C

The Court while interpreting and enforcing the relevant gratuity rules will have to bear in mind the concept of gratuity. The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of the Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity. [338C-D] D

Pension and gratuity which have much in common are well-recognised retiral benefits as measures of social security. It is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor it can be denied at the sweet will or fancy of the employer. If pension can be recovered through civil suit, there is no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par. [339G-H ; 340A]. E F

Burhanpur Tapti Mills Ltd. v. *Burhanpur Tapti Mills Mazdoor Sangh* : [1965] (1) LLJ 453, *Deokinandan Prasad* v. *State of Bihar & Ors.*, [1971] Supp. SCR 634, *State of Punjab & Anr.* v. *Iqbal Singh*, [1976] 3 SCR 360, *D.S. Nakara & Ors.* v. *Union of India*, [1983] 2 SCR 165 ; referred to.

If the rules for payment of gratuity become incorporated in the Standing Orders and thereby acquired the status of the statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary. Sec. 4 of the 1946 Act which confers power on the certifying officer or the appellate authority to adjudicate upon the fairness or reasonableness of the provisions would enable this Court to reject that part of Rule 10 which confers absolute discretion on the employer to pay gratuity even if it is earned, at its absolute discretion, as utterly unreasonable, ineffective and unenforceable. That part of Rule 10 must, therefore, be treated as ineffective and un enforceable. [340C-D] G H

A The claim to absolute discretion not to pay gratuity even when it is earned is a hang over of the *laissez faire* days and utterly inconsistent with the modern notion of fair industrial relations and, therefore, it must be rejected as ineffective and hence unenforceable. [340H]

B *Western India Match Company Ltd.* v. *Workmen*, [1974] 1 SCR 434; referred to.

Our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the anti-thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is, therefore, violative of Art. 14. Equality before law and absolute discretion to grant or deny benefit of C the law are diametrically opposed to each other and cannot co-exist. Therefore, also the conferment of absolute discretion by Rule 10 of the Gratuity Rules to give or deny the benefit of the rules cannot be upheld and must be rejected as unenforceable. [341A-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal

D No. 1803 of 1070

From the Judgment and Order dated 6.8.1968 of Patna High Court in first appeal No. 444 of 1967.

E *D.N. Mukherjee, Ranjan Mukherjee, A.K. Ganguli & S.C. Ghosh* for the appellant.

R.B. Datar and *Ms. Vina Tamta* for the respondents.

F The Judgment of the Court was delivered by

DEASI J. Appellant, an employee of Tata Iron and Steel Company Limited ('Company' for short) has been chasing a mirage: to wit to recover a paltry sum of Rs 14040 being the amount of gratuity to which he was entitled for the continuous service rendered by him from December 31, 1929 till August 31, 1959 under what G are styled as Retiring Gratuity Rules, 1937 ('Gratuity Rules' for short) from the Company and in this wholly unequal fight he laid down his life before enjoying the pittance to which he was entitled after three decades of loyal service. What a dreadful return for abject loyalty ? When the appellant retired by resignation from service he H was paid his provident fund dues but gratuity which he was entitled to be paid under the relevant rules was not paid to him. When the appellant claimed payment of gratuity, the respondent turned deaf

ears to it. Appellant sevred a notice dated September 6, 1981 calling upon the respondent to pay the amount of gratuity being Rs. 14040-. The Company did not respond to the notice. Thereupon the appellant filed M.S. No. 452 of 1962 in the court of Subordinate Judge at Jamshedpur.

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The respondent appeared and contested the suit inter-alia contending that 'in terms of the contract of service and particularly having regard to the relevant rules under which gratuity can be claimed, the same is payable on certification of satisfactory service by the head of the department, and it is payable at the absolute discretion of the Company irrespective of whether the employee has or has not performed all or any of the conditions stated in the rules and no employee howsoever otherwise eligible is entitled as of right to any payment under the rules.'

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The learned trial Judge framed the issues on which parties were at variance. The learned Judge held that the plaint does disclose a cause of action and the plaintiff was entitled to claim and recover the amont of gratuity with interest thereon. Accordingly, the suit was decreed against the Company directing it to pay the amount claimed in the plaint with future interest at 6% per annum with costs.

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The respondent Company preferred First Appeal No. 444 of 1963 in the High Court of Judicature at Patna. A Division Bench of the High Court held : i) that the service conditions of the plaintiff were governed by the Works Standing Orders and that it was an implied condition of service that the palintiff could get gratuity in accordance with the Gratuity Rules ; (ii) that in view of Rule 6, an employee governed by the Gratuity Rules is not entitled to claim the same as a matter of right but he merely attains the benefit of eligibility or suitability for the retiring gratuity and not the right ; iii) that until and unless the Company has decided to pay the gratuity in accordance with Rule 7 or otherwise, the mere fact of the employee becoming eligible to get it under the relevant rules which can be enforced in a civil court because the matter of payment of gratuity is at the absolute discretion of the Company as provided in Rule 10, and the employee, howsoever unfortunate the position may be under the modern stage of the society is not entitled to claim it as a matter of right because even though payment of gratuity under the Gratuity Rules is an implied condition of service,

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yet the condition is further conditioned by the provisions made in the Rules and is subject to them ; iv) that such a claim may be enforced before the Industrial Tribunal under the Industrial Disputes Act, 1947 but it is not possible to hold that the law of contract or the law of master and servant which is the only law to be enforced in a civil court can justify on interpretation of the Gratuity Rules in question that the plaintiff can be granted decree for payment of gratuity on the footing that it was the unconditional or unconditioned contractual obligation of the employer to pay such a money ; v) the payment of gratuity money is not a gift-pure and simple, but under the relevant rules it is in the nature of an incohate claim or interest and not a right enforceable by a suit in court, because under the contract of service, the grant of gratuity has been left to the sole discretion of the employer as the relevant rules provided that no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under the rules. Accordingly the appeal was allowed and the judgment and decree of the trial court were set aside and the plaintiff's suit was dismissed, directing the parties to bear their costs.

Hence this appeal by the plaintiff by special leave.

At the outset it is necessary to notice the relevant rules relied upon by the respondent in support of its submission that the gratuity cannot be claimed as a matter of right and the claim to gratuity cannot be enforced in the civil court. The Retiring Gratuity Rules came into force with effect from April 1, 1937 and at the relevant time, the rules as amended in 1948 were in operation. Rule 5 provides for retirement of every uncovenanted employee of the Company on attaining the age of 60 years subject to the right of the company to grant extension. This rule is a mere incorporation of S.O. 54 which provides for retirement on attaining the age of 60. Rules 6, 7 and 10 may be extracted :

"6. (a) Subject to the conditions referred to in these rules, every permanent unconvenanted employee of the Company, whether paid on monthly, weekly or on daily basis, including those borne on the pay rolls of the Company of the Collieries and at Ore Mines and Quarries, will be eligible for a retiring gratuity which shall be equal to half a month's salary or wages for every completed year of continuous service,

subject to a maximum of twenty months salary or wages in all,

(b) Provided that when an employee dies, retires or is discharged under Rule 11(2)(ii) and (iii) hereof, before he has served the Company for a continuous period of 15 years, a gratuity ordinarily limited to half a month's salary or wages for each qualifying year may be paid subject, however, to a maximum of 6 months' salary or wages in all.

(Amended vide Board Resolution No. VII dated 2nd July, 1953.)

(c) The retiring gratuity will be based on the rate of the salary or wages applicable to the employee in the last month of active service or if the employee has retired while on leave, in the last month prior to the employee going on leave.

(d) In the case of an uncovenanted employee who has been transferred to another Tata concern, the retiring gratuity payable to him under Rule (4) 8 (a) hereunder will be based on the rate of the salary or wages applicable to the employee in the last month of service with the Company,

(In force from 1.4.1946 as per Board Resolution dated 8.4.1948.)

7. Notwithstanding anything contained in these Rules a gratuity shall become due and be payable and shall always have been deemed to have become due and payable only in such instalments and over such period or periods as may be fixed by the Board of Directors of the Company or subject to the direction of the Board by the Managing Agents. Until any such instalment shall become or have become due and payable, the employee or any dependent who qualifies for payment under the Gratuity Rules shall not be eligible to receive or be paid any such instalment of the gratuity.

10. All retiring gratuities granted under these Rules other than special gratuity to be paid under the provisions of Rule 22 hereof shall be at the absolute discretion of the Com-

A pany irrespective of whether an employee has or has not performed all or any of the conditions herein after stated, and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any pamyent under these Rule.

B (Amended vide Board Resolution No. v dated 25.8-1955)."

The contention of the respondent is that the plaintiff did not retire from service but he left the service of the Company by resigning his post. This aspect to some extent agitated the mind of the C High Court. It may be dealt with first. It is not only not in dispute, but is in fact conceded that the plaintiff did render continuous service from December 31, 1929 till August 31, 1959. On exact computation, the plaintiff rendered service for 29 years and 8 months. Rule 6(a) which prescribed the eligibility criterion for payment of gratuity D provides that every permanent uncovenanted employee of the Company whether paid on monthly, weekly or daily basis will be eligible for retiring gratuity which shall be equal to half a month salary or wages for every completed year of continuous service subject to a maximum of 20 months salary or wages in all provided that when an employee E dies, retires or is discharged under Rule 11(2)(ii) and (iii) before he has served the Company for a continuous period of 15 years he shall be paid a gratuity at the rate therein mentioned. The expression 'retirement' has been defined in Rule 1 (g) to mean 'the termination of service by reason of any cause other than removal by discharge due to misconduct'. It is admitted that the plaintiff was a perma- F nent unconvenated employee of the Company paid on monthly basis and he rendered service for over 29 years and his service came to an end by reason of his tendering resignation which was unconditionally accepted. It is not suggested that he was removed by discharge due to misconduct. Unquestionably, therefore, the plaintiff retired from service because by the letter Annexure 'B' dated August 26, 1959, the resignation tendered by the plaintiff as per his letter dated July, 27, 1959 was accepted and he was released from his service with effect from September 1,1959. The termination of service was thus on account of resignation of the plaintiff being accepted by the respondent. The plaintiff has, within the meaining of the expression, thus retired from service of the respondent and he is qualified for payment of gratuity in terms of Rule 6.

Rule 7, in our opinion, has hardly any relevance because it enables the Company to pay gratuity by instalments. A

It is Rule 10 which is material for the purpose. It provides that payment of retiring gratuity under the Gratuity Rules, other than special gratuity to be paid under the provisions of Rule 22 which is not the case herein, shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions hereinafter stated, and no employee howsover otherwise eligible shall be deemed to be entitled as of right to any payment under the rules. The stand taken by the respondent to deny gratuity to the plaintiff is that gratuity payable under the rules is a matter of employer's largesse to be distributed at the absolute discretion of the Company and cannot be claimed as a matter of right even if the concerned employees has fulfilled the eligibility criteria. It is the interpretation of this Rule which would govern the outcome of this appeal. B C D

It may be mentioned that the High Court which ultimately upheld the contention of the respondent has specifically held that gratuity was an implied condition of service of the plaintiff in accordance with the relevant rules. The High Court reached this conclusion by first referring to Works Standing Orders framed by the Company which govern the conditions of service of the plaintiff. In other words according to the High Court, the service conditions of the plaintiff were governed by the Works Standing Orders. It is therefore necessary to determine the character of the Works Standing Orders Exh. C framed by the Company. This aspect was overlooked by the High Court with the consequence that tne High Court found it difficult to enforce the claim of gratuity against the respondent by a decree of the court. What then is the character of the Works Standing Orders framed by the Company ? Are they mere unenforceable rules or are they statutory in character or have a statutory flavour ? If they are statutory in character and they form part of the contract of service of every employee governed by the same, then the question would be whether its breach can be repaired or enforced by a civil suit ? E F G

The Parlaiment enacted the Inudstrial Employment (Standing Orders) Act, 1946 ('1946 Act' for short). The long title of the Act provides that it was an act to require employers in industrial establishments formally to define conditions of employment under them. H

The preamble of the Act provides that it is expedient to require employers in industrial establishments to define with sufficient precision the conditions of employment under them and to make the said conditions known to workmen employed by them. By Section 3, a duty was cast on the employer governed by the Act to submit to the Certifying Officer draft standing orders proposed by him for adoption in his industrial establishment. After going through the procedure prescribed in the Act, the Certifying Officer has to certify the draft standing orders. Section 8 requires the Certifying Officer to keep a copy of standing orders as finally certified under the Act in a register to be maintained for the purpose. Sub-sec. 2 of Section 13 imposes a penalty on employer who does any act in contravention of the standing orders finally certified under the Act. The act was a legislative response to the *laissez faire* rule of hire and fire at sweet will. It was an attempt at imposing a statutory contract of service between two parties unequal to negotiate, on the footing of equality. This was vividly noticed by this Court in *Western India Match Company Ltd.* v. *Workmen*[1] as under :

> "In the sunny days of the market economy theory people sincerely believed that the economic law of demand and supply in the labour market would settle a mutually beneficial bargain between the employer and the workmen. Such a bargainthey took it for granted, would, secure fair terms and conditions of employment to the workman. This law they venerated as natural law. They had an abiding faith in the verity of this law. But the experience of the working of this law over a long period has belied their faith."

The intendment underlying the Act and the provisions of the Act enacted to give effect to the intendment and the scheme of the Act leave no room for doubt that the Standing Orders certified under the 1946 Act become part of the statutory terms and conditions of service between the employer and his employee and they govern the relationship between the parties. *Workmen of Messrs Firestone Tyre & Rubber Co. of India (P) Ltd.* v. *Management and Ors.*[2] *Workmen in Buckingham and Carnatic Mills Madras* v. *Buckingham and Carnatic Mills*[3] *and M/s Glaxo Laboratories (I)*

(1) [1974] 1 SCR 434.
(2) [1973] 3 SCR 587 at 612.
(3) [1970] 1 Labour law Journal 26 at 29.

Ltd. v. *The Presiding Officer, Labour Court, Meerut & Ors.*[1]

The High Court recorded the finding that service conditions of the plaintiff were governed by the Works Standing Orders. No exception has been taken to this finding. It may at once be noted that the Works Standing Orders of the Company are Certified Standing Orders, under the 1946 Act evidenced by Certificate No. 45 dated March 18, 1950. S.O. 54 provides that every uncovenanted employee of the Company shall retire from service on attaining the age of 60 years. This S.O. 54 is bodily incorporated in Rule 5 of the Gratuity Rules. Relying on S.O. 54 and the evidence recorded in the case, the High Court reached the conclusion that payment of gratuity was an implied condition of service of the plaintiff. Rule 6(a) provides that 'subject to the conditions prescribed in the rules, every permanent uncovenanted employee of the Company will be eligible for a retiring gratuity in the manner and to the extent for a retiring gratuity in the manner and to the extent mentioned therein. Retiring gratuity becomes payable on retirement, which means termination of service by reason of any cause other than removal by discharge due to misconduct. On a combined reading of S.O. 54 and the Rule 5 of the Gratuity Rules the High Court rightly concluded that payment of gratuity was a condition of service but somehow the High Court qualified it by saying that it was an implied condition of service. It is well-settled by a catena of decisions, that Certified Standing Orders bind all those in employment at the time of service as well as those who are appointed thereafter.' *Agra Electricity Supply Co. Ltd.* v. *Sri Alladin & Ors.*[2] Now upon a combined reading of S.O. 54 along with Rule 5 and 6(a) of the Gratuity Rules, it becomes distinctly clear that payment of gratuity was an express or statutory condition of service and to this limited extent the finding of the High Court has to be modified.

If payment of gratuity is thus shown to be a statutory or express condition of governing the relationship between the plaintiff and the company, it would be obligatory upon the company to pay the gratuity on retirement of the plaintiff. If the company declines or refuses to pay or discharge its statutory obligation, could the claim be enforced by a civil suit? The High Court was of the opinion

(1) [1984] 1 SCC 1
(2) [1970] 1 S.C.R. 806.

that even though payment of gratuity was a condition of service in view of the provision contained in Rule 10, the same cannot be claimed as a matter of right or its recovery cannot be enforced by a civil suit. The High Court was constrained to observe that Rule 10 which confers absolute discretion on the Company to pay the gratuity at its sweet will is unconscionable and incompatible with the modern notions or conditions which ought to govern the relations between employer and that upon an industrial dispute being raised, the Industrial Tribunal may be in a position to award the gratuity as a matter or right even under the existing rules, but according to High Court, it cannot be enforced by a civil suit. In reaching this conclusion the High Court overlooked the effect of certified Standing Orders and the inter-relation between the Retiring Gratuity Rules and S.O. 54.

At this stage it would be appropriate to examine the effect of a breach of condition of service which is either statutory in character or has the statutory flavour. When under 1946 Act, an obligation is cast on the employer to specifically and precisely lay down the conditions of service, Sec. 13(2) subjects the employer to a penalty if any act is done in contravention of the Standing Orders certified under the Act. It would appear that such conditions of service prescribed in Standing Orders get incorporated in the contract of service of each employee with his employer. A facet of collective bargaining is that any settlement arrived at between the parties would be treated as incorporated in the contract of service of each employee governed by the settlement. Similarly certified Standing Orders which statutorily prescribe the conditions of service shall be deemed to be incorported in the contract of employment of each employee with his employer. As far as the incorporation of the results of collective bargaining into the individual contract of employment is concerned, the courts have in effect created a presumption of more or less systematic translation of the results of collective bargaining into individual contracts where these results are in practice operative and effective in controlling the terms on which employment takes place : (Labour Law Text and Materials by Paul Davies and Mark Freedland p. 233) O Kahn Freund describes collective bargaining as crystalised custom to be imported into contracts of employment on the same basis as trade custom (System of Industrial Relations in Great Britain p. 58-59). This would be all the more true of certified Standing Orders governing conditions of service between workman and his employer. If the employer commits a breach of the contract of employment, the same can be en-

enforced or remedied depending upon the relief sought by a civil suit. If contract for personal service is sought to be specifically enforced by a decree of civil court, the court will have to keep in view the provisions of Sec. 14 of the Specific Relief Act, 1963 which provides that contract for personal service cannot be specifically enforced. We are not concerned with the exceptions to this rule such as the power of Industrial Tribunal to grant relief of reinstatement. We are concerned with the jurisdiction of civil court. The jurisdiction of civil court amongst others is determined by the nature of relief claimed. Now if the relief claimed is a money decree by enforcing statutory conditions of service, the civil court would certainly have jurisdiction to grant the relief. Plaintiff filed the suit alleging that he was entitled to payment of gratuity on completion of service for the period prescribed. He alleged it and the High Court accepted it as a condition of service. Its breach would give rise to a civil dispute and civil suit would be the only remedy. In the case of workman governed by the Industrial Disputes Act, 1947, Sec. 33(c)(2) may provide an additional forum to recover monetary benefit. It is not suggested that plaintiff was a workman governed by the Industrial Disputes Act. The High Court was, therefore, in error in holding that the remedy was only by way of an industrial dispute and not by a civil suit. In reaching this conclusion, the Court High closed the door of justice to every employee though entitled to gratuity but would not be a workman within the meaning of the Industrial Disputes Act, 1947 to recover the same, except where a prosecution can be successfully launched for an offence under Sec. 13(2) against the employer.

One more difficulty the High Court experienced in the way of the plaintiff maintaining the suit and recovering the amount of gratuity was that under Rule 10 gratuity was payable at the absolute discretion of Company and cannot be claimed as a matter of right. Undoubtedly, Rule 10 confers discretion on the company to pay the gratuity even if the same is earned by satisfying the conditions subject to which gratuity becomes payable. Rule 10 provides that 'all retiring gratuities grantyd under the rules shall be at the absolute discretion of the Company irrespective of whether an employee has or has not performed all or any of the conditions set out in the rules and no employee howsoever otherwise eligible shall be deemed to be entitled as of right to any payment under the rules.' Such absolute discretion is wholly destructive of the character of gratuity as a retiral benefit. It is satisfactorily established and the High

Court has so ruled that payment of gratuity was a condition of service albeit implied condition of service which part does not stand scrutiny. 1946 Act was amended specifically in 1956 by Amending Act 36 of 1956 by which power was conferred upon the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of any standing orders. It is not clear whether the Rule 10 which apppears to have been framed in the heyday of *laissez faire* has been recast, modified or amended to bring the same in conformity with the modern notions of social justice and Part IV of the Constitution. Assuming it is not done, the court while interpreting and enforcing the relevant rules will have to bear in mind the concept of gratuity. The fundamental principle underlying gratuity is that it is a retirement benefit for long service as a provision for old age. Demands of social security and social justice made it necessary to provide for payment of gratuity. On the enactment of Payment of Gratuity Act, 1972 a statutory liability was cast on the employer to pay gratuity.

Pension and gratuity coupled with contributory Provident Fund are well-recognised retiral benefits. These retiral benefits are now governed by various statutes such as the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Payment of Gratuity Act, 1972. These statutes were legislative responses to the developing notions of fair and humane conditions of work, being the promise of Part IV of the Constitution. Art. 37 provides that 'the provisions contained in Part-IV-Directive Principles of State Policy, shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.'' Art. 41 provides that 'the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in 'cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.' Art. 43 obligates the State to secure, by suitable legislation to all workers, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure.....' The State discharged its obligation by enacting these laws. But much before the State enacted relevant legislation, the trade unions either by collective bargaining or by statutory adjudication acquired certain benefits, gratuity being one of them. Pension and gratuity are both retiral benefits ensuring that the workman who has spent his useful span

of life in rendering service and who never got a living wage, which would have enabled him to save for a rainy day, should not be reduced to destitution and penury in his old age. As a return of long service he should be assured social security to some extent in the form of either pension, gratuity or provident fund whichever retiral benefit is operative in the industrial establishment. It must not be forgotten that it is not a gratitious payment, it has to be earned by long and continuous service.

Can such social security measures be denuded of its efficacy and enforcement by so interpreting the relevant rules that the workman could be denied the same at the absolute discretion of the employer notwithstanding the fact that he or she has earned the same by long continuous service ? If Rule 10 is interpreted as has been done by the High Court, such would be the stark albeit unpalatable outcome." It is therefore necessary to take a leaf out of history bearing on the question of retiral benefits like pension to which gratuity is equated. *In Burhanpur Tapti Mills Ltd.* v. *Burhanpur Tapti Mills Mazdoor Sangh*[1] wherein this Court observed that :" a *Scheme of gratuity and a scheme of pension have much in* common. Gratuity is a lump sum payment while pension is a period payment of a stated sum." Undoubtedly both have to be earned by long and continuous service.

For centuries the courts swung in favour of the view that pension is either a bounty or a gratitious payment for local service rendered depending upon the sweet will or grace of the employer not claimable as a right and therefore, no right to pension can be enforced through court. This view held the field and a suit to recover pension was held not maintainable. With the modern notions of social justice and social security, concept of pension underwent a radical change and it is now well-settled that pension is a right and payment of it does not depend upon the discretion of the employer, nor can it be denied at the sweet will or fancy of the employer. *Deokinandan Prasad* v. *State of Bihar & Ors.*,[2] *State of Punjab & Anr.* v. *Iqbal Singh*[3] and *D.S. Nakara & Ors.* v. *Union of India*[4]. If pension which is the retiral benefit as a measure of social security can be recovered

(1) [1965] 1 LLJ 453.
(2) [1971] Supp. SCR 634.
(3) [1976] 3 SCR 360.
(4) [1983] 2 SCR 165

through civil suit, we see no justification in treating gratuity on a different footing. Pension and gratuity in the matter of retiral benefits and for recovering the same must be put on par.

The question then is : Can the court ignore Rule 10 ? If gratuity is a retiral benefit and can be earned as a matter of right on fulfilling the conditions subject to which it is earned, any rule confering absolute discretion not testable on reason, justice or fair-play must be treated as utterly arbitrary and unreasonable and discarded. If rules for payment of gratuity became incorporated in the Standing Orders and thereby acquired the status of statutory condition of service, an arbitrary denial referable to whim, fancy or sweet will of the employer must be rejected as arbitrary. Sec. 4 of the 1946 Act which confers power on the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions would enable this Court to reject that part of Rule 10 conferring absolute discretion on the employer to pay or not to pay the gratuity even if it is earned as utterly unreasonable and unfair. It must be treated as ineffective and unenforceable. It is well-settled that if the Certifying Officer and the appellate authority under the 1946 Act while certifying the Standing Orders has power to adjudicate upon the fairness or reasonableness of the provisions of any standing orders, this Court in appeal under Art. 136 shall have the power to do the same thing when especially it is called upon to enforce the unreasonable and unfair part of the Standing Order. It therefore follows that part of Rule 10 which confers absolute discretion on the employer to pay gratuity even if it is earned, at its absolute discretion is ineffective and unenforceable. This approach does not acquire any precedent but if one is needed the decision of this Court in *Western India Match Company Ltd. case* clearly rules to that effect. In that case, the company relied on a special agreement which was to some extent in derogation of the provisions of the certified Standing Order. The Court observed that to uphold such special agreement would mean giving a go-by to the principle of three party participation, in the settlement of the terms of employment, as represented by the certified Standing Orders and therefore, the inconsistant part of special agreement is ineffective and unenforceable. The claim to absolute discretion not to pay gratuity even when it is earned is a hangover of the *laissez faire* days and utterly inconsistant with the modern notions of fair industrial relations and therefore, it must be rejected as ineffective and hence unenforceable.

Viewed from a slightly different angle, our Constitution envisages a society governed by rule of law. Absolute discretion uncontrolled by guidelines which may permit denial of equality before law is the anti-thesis of rule of law. Absolute discretion not judicially reviewable inheres the pernicious tendency to be arbitrary and is therefore violative of Art. 14. Equality before law and absolute discretion to grant or deny benefit of the law are diametrically opposed to each other and cannot co-exist. Therefore, also the conferment of absolute discretion by Rule 10 of the Gratuity Rules to give or deny the benefit of the rules cannot be upheld and must be rejected as unenforceable.

The High Court reversed the decree of the trial court on the sole ground that Rule 10 confers an absolute discretion on the respondent-company to pay or not to pay gratuity at its sweet will. Once Rule 10 is out of the way, the judgment of the High Court has to be reserved. Accordingly, this appeal succeeds and will have to be allowed.

The trial court decreed the plaintiff's suit with costs and with interest at 6% per annum. Interest at 6% per annum has become utterly irrelevant in these days with devaluation of the rupee. Further in our opinion, the company declined to meet its obligation on an utterly unreasonable stand and denied to the plaintifff or a period of a quarter of a century what the plaintiff was legitimately entitled without the slightest shadow of doubt. Therefore, while allowing the appeal in order to compensate the loss suffered by the plaintiff who died before enjoying the fruits of his decree, we direct that the interest shall be paid at 15% per annum and full costs throughout.

Accordingly, this appeal is allowed and the judgment and decree of the High Court are set aside and the decree of the trial court is restored with this modification that the interest shall be paid on the principal amount of Rs 14,040 at 15% from 1.7.1959 till payment and full costs throughout be paid to the plaintiff. The costs plaintiff in this Court is quantified at Rs 5,000. The payment shall be made within a period of two months from today.

H.S.K. *Appeal allowed.*