

their onward and safe transmission to the respondents.

20. Let a copy of this order be communicated to the Principal Secretary (Fisheries), Government of U.P., Lucknow, the Director (Fisheries), Directorate of Fisheries, U.P., Lucknow, the Finance and Accounts Officer, Directorate of Fisheries, U.P., Lucknow and the Deputy Director (Fisheries), Kanpur Division, Kanpur by the Registrar (Compliance).

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(2025) 6 ILRA 124

**ORIGINAL JURISDICTION  
CIVIL SIDE**

**DATED: ALLAHABAD 06.06.2025**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Writ - A No. 18453 of 2024

**Rakesh Kumar Tyagi**                      **...Petitioner**  
**Versus**  
**State of U.P. & Ors.**                      **...Respondents**

**Counsel for the Petitioners:**

Sujeet Kumar Rai

**Counsel for the Respondents:**

C.S.C., Satyam Singh

**A. Service Law - Constitution of India,1950 - Article 226 & 300A - Payment of Gratuity Act,1972-Section 4(6)-U.P. Cooperative Societies Employees Service Regulations,1975-Regulations 84 and 96- withholding of gratuity and dues-The petitioner , a retired Senior Branch Manager of the District Cooperative Bank Limited Ghaziabad challenged the withholding of Rs. 19.25000 from his post retirement benefits by the Bank-The amount was retained due to loans he had sanctioned, which later became non-performing assests(NPAs)-The court held that such**

**recovery was illegal in the absence of any disciplinary proceedings or criminal conviction-Gratuity and post-retiral benefits are protected u/s 4(6) of the Act,1972 and Article 300A of the Constitution -Recovery from such benefits is impermissible unless services were terminated for proven misconduct-Administrative decisions or internal resolutions cannot override these legal protections-Thus, Impugned orders and resolution quashed-Bank directed to release withheld amount with interest. (Para 22 to 35)**

**List of Cases cited:**

1. U.P. Coop. Union & ors. Vs Prabhu Dayal Srivastava & ors.(1988) SCC Online All 302
2. St. of Jhar. & ors. Vs Jitendra Kr. Srivastava & anr.(2013) 12 SCC 210

(Delivered by Hon'ble J.J. Munir, J.)

1. The petitioner questions an order of the Chief Executive Officer, District Cooperative Bank Limited, Ghaziabad dated 18.11.2024 and the resolution of the Committee of Management of the said Bank dated 08.10.2024, in effect, withholding a sum of Rs.19,25,500/- out of his post retiral benefits on account of loan disbursed by the petitioner, that have turned into non-performing assets, allegedly due to callous disbursement of those loans to customers.

2. The petitioner retired from service of the District Cooperative Bank Limited, Ghaziabad (for short, 'the Bank') as a Senior Branch Manager on 31.12.2022. He entered service of the Bank as a Clerk-cum-Cashier on 12.07.1988, steadily earning his promotions to the post of a Senior Branch Manager that he held at the time of retirement. It is the petitioner's case that he had an unblemished service record. Upon

retirement, all that was paid to him was his contributory provident fund and nothing else. The petitioner, therefore, made an application dated 01.01.2024 to the Chief Executive Officer of the Bank, requesting the release of his post retiral benefits and explaining his position in regard to some loans that he had sanctioned, which turned into non-performing assets.

3. On 18.01.2024, the petitioner moved another application, pointing out the lapse on part of other incumbents in the office of the Branch Manager, where the loans had become non-performing assets in not taking timely steps to recover. He moved yet another application on 12.03.2024 to the Bank, claiming release of his post retiral benefits in their entirety. Still another application was made by the petitioner on 16.04.2024 to the Bank, pointing out that in view of the provisions of the Payment of Gratuity Act, 1972, the gratuity of a retired employee can neither be forfeited nor adjusted.

4. Failing in all endeavours under the Uttar Pradesh Co-operative Societies Act, 1965 (for short, 'the Act of 1965'), the petitioner caused a legal notice dated 22.06.2024 to be served upon the Bank through his learned Advocate. Upon this demand, the Bank responded to the legal notice through a memo dated 26.07.2024 addressed to the learned Counsel and another dated 22.08.2024 addressed to the petitioner, which in sum and substance show on one hand the total outstanding post retiral dues in the petitioner's favour with their break-up, and, on the other, the total sum of money, that had become a non-performing asset on account of loans allegedly sanctioned by the petitioner, in a callous fashion, in favour of ten loanees. The particulars of those loans were also

indicated. In substance, these two memoranda indicate that the dues of the petitioner stand at a figure of Rs.33,61,045/-, whereas the total sum of loans sanctioned by the petitioner negligently, that have turned into non-performing assets account for a figure of Rs.19,25,397.77 as on 22.07.2024.

5. The post retiral dues standing to the petitioner's credit, to which he was entitled upon retirement, are payable under the following heads:

| Sl. No. | Item            | Amount         |
|---------|-----------------|----------------|
| 1       | Bonus           | 221561.00      |
| 2       | Incentive       | 135862.00      |
| 3       | Gratuity        | 2624146.00     |
| 4       | Group Insurance | 94079.00       |
| 5       | Earned Leave    | 285397.00      |
| Total   |                 | 336<br>1045.00 |

6. On the other, the total sum of Rs.19,25,397.77, which account for the Bank loans, sanctioned and disbursed by the petitioner, that have turned non-performing assets, are depicted below in tabular form:

| Sl. No | Borrower's Name | Father's / Husband's Name | Address | Loan Account Number | Status as on 22.07.2024 |
|--------|-----------------|---------------------------|---------|---------------------|-------------------------|
|        |                 |                           |         |                     |                         |

|   |                |                   |  |                           | Original       | Interrest                            | Total                                |
|---|----------------|-------------------|--|---------------------------|----------------|--------------------------------------|--------------------------------------|
| 1 | Neeraj         | Parm<br>a<br>nand | H.No. 93,<br>Village<br>Nagla<br>Aankhu,<br>P.S.<br>Niwadi,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d | 80<br>80/<br>15<br>6<br>0 | 89<br>77<br>6  | 8<br>4<br>7<br>8<br>8<br>8           | 7<br>4<br>5<br>6<br>4<br>6<br>8      |
| 2 | Inderpa<br>l   | Shis<br>hram      | Village<br>Hridaypu<br>r<br>Mandola,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d                        | 80<br>80/<br>15<br>2      | 16<br>51<br>49 | 1<br>5<br>2<br>4<br>9<br>9<br>7      | 3<br>1<br>7<br>3<br>8<br>9<br>7      |
| 3 | Pawan<br>Kumar | Vish<br>amba<br>r | Village<br>Latifpur<br>Tibda,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d                               | 80<br>80/<br>16<br>4      | 42<br>75<br>5  | -<br>5<br>5<br>0<br>0                | 4<br>2<br>7<br>5<br>5<br>0<br>0      |
| 4 | Rajend<br>ra   | Ragh<br>uvec<br>r | Village<br>Nagla<br>Aankhu,<br>P.S.<br>Niwadi,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d              | 80<br>80/<br>16<br>6      | 83<br>48<br>3  | 9<br>5<br>5<br>4<br>9<br>8           | 1<br>7<br>9<br>0<br>7<br>9<br>8      |
| 5 | Hanif          | Maq<br>sood       | Village<br>Nagla<br>Aankhu,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d                                 | 80<br>80/<br>16<br>7      | 81<br>07<br>4  | 8<br>8<br>7<br>9<br>8<br>8<br>1<br>4 | 1<br>6<br>9<br>8<br>7<br>2<br>1<br>4 |

|    |                       |                          |  |                      |                |                                      |                                      | 4 |
|----|-----------------------|--------------------------|--|----------------------|----------------|--------------------------------------|--------------------------------------|---|
| 6  | Brijmo<br>han         | Saty<br>a<br>prak<br>ash | Village<br>Nagla<br>Aankhu,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d | 80<br>80/<br>16<br>8 | 10<br>21<br>30 | 1<br>1<br>1<br>8<br>0<br>5<br>7<br>9 | 2<br>1<br>3<br>9<br>3<br>5<br>7<br>9 |   |
| 7  | Rakesh<br>Devi        | Brah<br>m<br>Sing<br>h   | Village<br>Nagla<br>Aankhu,<br>Tehsil<br>Modinag<br>ar,<br>Ghaziaba<br>d | 80<br>80/<br>17<br>0 | 89<br>70<br>8  | 9<br>1<br>0<br>6<br>8<br>7<br>8      | 1<br>8<br>0<br>7<br>7<br>6<br>7<br>8 |   |
| 8  | Shobin<br>der         | Budd<br>h<br>Sing<br>h   | Village +<br>Post<br>Patla,<br>Ghaziaba<br>d                             | 80<br>80/<br>17<br>4 | 10<br>44<br>55 | 1<br>1<br>7<br>8<br>8<br>7<br>4<br>2 | 2<br>2<br>2<br>3<br>4<br>2<br>4<br>2 |   |
| 9  | Jitende<br>r<br>Kumar | Tilak<br>Ram             | Village +<br>Post<br>Bhaneda<br>Nagla<br>Aankhu,<br>Ghaziaba<br>d        | 80<br>80/<br>17<br>5 | 93<br>91<br>2  | 1<br>0<br>2<br>8<br>0<br>3<br>0<br>9 | 1<br>9<br>6<br>7<br>1<br>5<br>0<br>9 |   |
| 10 | Raj<br>Kumar          | Baler<br>am              | Village +<br>Post<br>Patla,<br>Ghaziaba<br>d                             | 80<br>80/<br>17<br>7 | 10<br>68<br>29 | 2<br>1<br>1<br>2<br>9<br>9<br>2      | 2<br>2<br>7<br>9<br>5<br>8<br>9<br>2 |   |

Total Sum: 19,25,397.77

7. Apparently, therefore, the Bank proposed to withhold a part of the petitioner's post retiral benefits, subject to realization of their non-performing assets on account of the loans sanctioned by the petitioner while in service, and recover the Bank's lost money from the petitioner's retirement benefits. The petitioner, therefore, instituted Writ-A No.13459 of 2024 before this Court, where this Court passed the following order on 03.09.2024:

*“Heard Sri Sujeet Kumar Rai, learned counsel for the petitioner and Sri Satyam Singh, learned counsel for the contesting respondent Nos. 2 & 3.*

*By means of this petition filed under Article 226 of the Constitution, petitioner has questioned the notices issued to him dated 26th July, 2024 and 22nd August, 2024, whereby he has been directed to furnish his explanation qua certain dues with regard to the non performance of assets in respect of the loan disbursed by him while he was Senior Branch Manager of the society. He submits that the notice is virtually a direction instead of asking a simplicitor reply.*

*Sri Satyam Singh, learned counsel for the respondent Nos.- 2 & 3 does not have any objection in the event petitioner is directed to represent the matter against the notice and any further action is taken only after the disposal of the objection/ representation of the petitioner.*

*In view of the above, this petition stands disposed of with a direction to the petitioner to furnish reply to the notices issued to him within a period of four weeks from today and in the event any such reply is made as directed in here above, the same shall be disposed of first after giving full*

*opportunity of hearing to him within a further period of one month.*

*It is further provided that until a final decision is taken in the matter as directed herein above, no recovery pursuant to the notice shall be pursued against the petitioner.”*

8. In compliance with the said order, the Bank issued a notice to the petitioner dated 01.10.2024, calling him for a personal hearing before the Committee of Management of theirs on 08.10.2024 at 10 o'clock in the morning hours at the Bank Headquarters. On 08.10.2024, the petitioner appeared before the Bank's Committee of Management, submitting that he had filed his reply on 12.09.2024, which may be taken into consideration. At the time, this petition was instituted, the petitioner knew the result of the orders made by the Committee of Management and the consequential orders of the Chief Executive Officer, but he did not have with him a copy of the decision taken by the Committee of Management. The result of the decision of the Committee of Management was that a sum of Rs.19,25,000/- has been invested in an FDR standing in the petitioner's name with the Raj Nagar Branch of the Bank, but with the Bank's lien marked on the said sum of money.

9. The FDR for the sum of Rs.19,25,500/- has been pledged by the Bank in their favour, though the instrument stands in the petitioner's name. A photostat copy of the said FDR dated 17.10.2024 is available on record at page No.70 of the paper-book. The date of maturity is 17.10.2025. There is an endorsement across its face, which read: “Pledge – Zila Sahkari Bank Ltd. Ghaziabad. PLEDGE. Sd./- Br.

Manager". The balance of Rs.14,35,554/- due on account of the petitioner's post retiral benefits has been remitted to the petitioner's account, releasing it unconditionally in his favour. The petitioner made a request for the provision of a copy of the resolution passed by the Committee of Management dated 08.10.2024, by which a substantial sum of his post retiral benefits was directed to be withheld in the FDR, invested in his own name, but to no avail.

10. Aggrieved by the non-payment of the balance of his post retiral benefits and deprived of the right of being served with a copy of the Committee of Management's resolution dated 08.10.2024, authorizing retention of the unpaid part of his retirement benefits, the petitioner has instituted the present writ petition under Article 226 of the Constitution. He prayed, amongst others, that the resolution of the Bank, directing the withholding of a part of his post retiral benefits, may be summoned from the respondents and quashed. The petitioner has further prayed that a writ of mandamus be granted by this Court, ordering the third respondent, the Secretary & Chief Executive Officer of the Bank, to release the FDR, bearing No. 0002196, illegally pledged by the Bank in their favour for a sum of Rs.19,25,500/- together with interest.

11. *Vide* order dated 25.11.2024, we required the Secretary & Chief Executive Officer of the Bank to appear in person and show cause why a copy of the order, passed in compliance with our order dated 03.09.2024 in Writ-A No.13459 of 2024, had not been furnished to the petitioner. On the next date, when the matter came up, an affidavit along with an

exemption application has been filed on behalf of respondent No.3. Along with this affidavit, a copy of the order dated 18.11.2024 passed by the Chief Executive Officer of the Bank, directing retention of the petitioner's fund and its investment in the FDR in compliance with the Committee of Management's resolution, was enclosed as Annexure No.1 to the CEO's affidavit. This Court, accordingly, proceeded to issue a notice of motion by a detailed order dated 02.12.2024. In compliance, respondent Nos.2 and 3 filed a counter affidavit dated 08.12.2024. Along with the counter affidavit, a copy of the resolution of the Committee of Management, authorizing retention of the petitioner's post retiral benefits and their investment in the FDR, pledged in the Bank's favour was also enclosed. This resolution is one dated 08.10.2024 and annexed as Annexure No.2 to the counter affidavit. Now, therefore, it is the order of the Chief Executive Officer dated 18.11.2024 and the resolution of the Committee of Management of the Bank dated 18.10.2024 that the petitioner wants us to quash and grant him a mandamus for the substantial relief that he desires. The parties having exchanged affidavits, when the petition came up on 09.12.2024, it was admitted to hearing, which proceeded forthwith. Judgment was reserved.

12. Heard Mr. Sujeet Kumar Rai, learned Counsel for the petitioner, Mr. Satyam Singh, learned Counsel for respondent Nos.2 and 3 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel appearing on behalf of the State.

13. The question in this case, that requires consideration is, if for the Bank's accounts, that have become non-performing assets, may be due to some negligence on

the petitioner's part in drawing up papers relating to loans advanced during his time, can the petitioner's post retiral benefits be withheld without holding disciplinary proceedings against him? We do not think so. There is no pension for the petitioner admissible under the Rules and the break-up of his post retiral benefits, in the earlier part of the judgment, would show that out of his total post retiral benefits, that is to say, a sum of Rs.33,61,045/-, Rs.26,24,146/- are comprised of the component of gratuity payable. Now, gratuity under the Uttar Pradesh Co-operative Societies' Employees Service Regulations, 1975 (for short, 'the Regulations of 1975') framed under the Act of 1965, is dealt with under Chapter VII, Regulation 95 of the Regulations of 1975. Regulation 95 is all that is there about gratuity under the Regulations of 1975. Regulation 95 reads:

**“95. Gratuity.—** (i) A co-operative society may by a resolution of its committee of management allow to its employee gratuity equivalent to not more than 15 days' salary for every complete year of service (part of the year if less than six months, to be ignored), if he has attained the age of superannuation or has been declared invalid for service by the Civil Surgeon or has been retrenched or dies while in service:

Provided he has put in ten years of continuous service immediately preceding retirement, invalidation, or retrenchment or five year's continuous service in case of death, as the case may be. In case of death gratuity shall be payable to the nominee of the employee and in the absence of nomination, to his legal heir.

(ii) For purposes of meeting its obligations under clause (I), a co-operative

society may create Employees' Gratuity Fund.”

14. Regulation 103 of the Regulations of 1975 reads:

“103. The provisions of these regulations to the extent of their inconsistency, with any of the provisions of the Industrial Disputes Act, 1947, U. P. Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, Workmen's Compensation Act, 1923 and any other labour laws for the time being in force, if applicable to any co-operative society or class of co-operative societies, shall be deemed to be inoperative.”

15. The clear purport of Regulation 103 of the Regulations of 1975 is that these regulations, to the extent they are inconsistent with the provisions of the Industrial Disputes Act, 1947, the Workmen's Compensation Act, 1923 and any other labour law for the time being in force, if applicable to any cooperative society or a class of such society, shall be deemed to be inoperative. In other words, in case of conflict between any provision of the Regulations of 1975 and the provisions of the named statutes in Regulation 103, or any other labour laws for the time being in force, the provisions of the Regulations of 1975 would yield to the named statutes or any other conflicting labour laws.

16. Now, the Act of 1972 would certainly fall in the class of 'any other labour laws for the time being in force', mentioned in Regulation 103, but to see if the provisions of the Act of 1972 would exclude the Regulations of 1975, it would have to be determined if there is inconsistency between the provisions of the Act of 1972 and the Regulations of 1975.

As we read the provisions of the two statutes, any inconsistency, that may be there, can be about the computation of gratuity, that is provided under Regulation 95 of the Regulations of 1975, or the eligibility to receive gratuity. There is nothing in Regulation 95 of the Regulations of 1975 or elsewhere in those regulations, that may conflict with the other provisions of the Act of 1972, relating to payment of gratuity to the employees of a Cooperative Society, whose terms and conditions of service are governed by the Regulations of 1975.

17. The foremost question is if the Act of 1972 would apply to a co-operative society, like the respondents, engaged in the business of banking. Section 1 of the Act of 1972 reads:

**"1. Short title, extent, application and commencement.—(1) This Act may be called the Payment of Gratuity Act, 1972.**

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to—

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

(3-A) A shop or establishment to which this Act has become applicable shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

(4) It shall come into force on such date as the Central Government may, by notification, appoint."

(emphasis by Court)

18. The question, whether the Act of 1972 would apply to a co-operative society, fell for consideration before this Court in regard to the Uttar Pradesh Co-operative Union. The Uttar Pradesh Co-operative Union is an apex co-operative society registered under the Act of 1965. If the co-operative union, which is after all a society registered under the Act of 1965, has been held by this Court to be within the ambit of the Act of 1972, regarding it as an 'establishment' within the meaning of Sections 1(3)(b) and 1(3)(c) of the said Act, there is no basis to think that the Bank, who are after all a co-operative society registered under the Act of 1965, are not to be regarded as an establishment within the meaning of Sections 1(3)(b) and 1(3)(c) of the said Act. Now, this holding of a Division Bench of our Court in **Uttar Pradesh Co-operative Union and others v. Prabhu Dayal Srivastava and others, 1988 SCC OnLine All 302**, is to be noted for the relevant remarks of their Lordships. In **Prabhu Dayal Srivastava (supra)**, it has been held:

“5. We are conscious that the Act is a progressive, social and beneficial legislation and it has to be interpreted as to promote the purpose or object of the Act. In such matters the construction that promotes the purpose of legislation should be preferred rather than just a literal construction. Under S. 1(3)(c) the relevant clause is “such other establishment” in a State in which ten or more persons are employed or were employed on any day of the preceding twelve months. The preceding Cl. 1(3)(b) was “every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishment in a State.” The word “and” even though appears to be conjunction, but keeping in view the legislative intent and applying elementary principles of textual and contextual interpretation it appears to have the meaning of “or” and has been accordingly, used in a disjunctive sense. This preceding clause under S. 1(3)(b) to the effect “every shop or establishment within the meaning of any law for the time being in force in relation to shops” has got a complete meaning with the establishment pertaining to shops. There was no sense in using the word “and,” a conjunction, and to add subsequent clause “establishment in a State” in which ten or more persons are employed. This obviously indicates that subsequent expression “establishment in a State” has been used in an independent and different sense than the preceding clause and has nothing to do with the establishment in relation to shops. In our opinion the word “and” has been used disjunctively to mean “or.” We are conscious that the word “or” is antithesis of word “and” and the meaning of word “and” has to be sparingly interpreted as “or.” The context of expression has been used under Sub-cl. (b) or Sub-cl. (c) of S. 1(3) of the

Act. Keeping in view of the intention and purpose of legislation to provide gratuity to employees drawing wages up to Rs. 270 per month or otherwise. The object of the Act can also be in brief looked into, which is to the following effect:

“The Bill provides for payment of gratuity to employees drawing wages up to Rs. 750 per month in factories, plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease. The quantum of gratuity payable will be 15 days' wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' wages. The term wages means basic wages plus dearness allowance.”

6. In the aforesaid object of the Act it has been clearly specified that the employees of factories, plantations, shops, establishments and mines have been separately provided. It means that the object of legislation was to provide benefit of gratuity to establishments independently of shops.

7. Much emphasis was laid by the learned counsel for petitioner on the word “establishment” used in second clause after the word “and.” the word “establishment” is, however, not a defined term either under the Act or under the General Clauses Act. It is now well-settled principle that dictionary meaning of a word cannot be looked into in case the word has been defined statutorily or has been judicially defined. But where there is no such definition or interpretation, the Court can take the aid of dictionaries to ascertain the meaning in common parlance.

In doing so the Court must bear in mind that the words are used in different sense according to its context and the dictionary gives all the meaning of a word and the Court would, therefore, have to select from the meaning which would be relevant to the contest in which it has to interpret the words. See *State of Orissa v. Titaghar Paper Mills Company, Ltd.* [1985 Supp SCC 280 : A.I.R. 1985 S.C. 1296].

8. It is better to have some dictionary meanings of the word “establishment.” According to Black's Law Dictionary the word “establishment” connotes an institute, a place where conducted, to settle or fix firmly, place of a permanent footing. According to Words and Phrases (Permanent Edn.), Vol. 15, the word “establishment” means a place where one is permanently fixed for residence or business, such as an office or place of business with its fixtures. Further it means an establishment in which employee is or was employed. “Establishment” means merely something established. In Webster's International Dictionary the word “establishment” means an institute or place of business with its fixtures and organized staff. Oxford Dictionary defines the term “establishment” as organized body of men maintained for a purpose. According to Bouvier, Law Dictionary the word “establishment” connotes that which is instituted or established for public or private use.

10. In *V. Transport [Private], Ltd. v. Regional Provident Fund Commissioner, Madras* [A.I.R. 1965 Mad. 466], it means been held that the word “establishment” has been interpreted to mean an organization which employs persons, where relationship of employee and employer comes into existence.

11. We are accordingly of the opinion that the word “establishment” as used under S. 1(3)(b) or S. 1(3)(c) of the Act connotes an organized body of men and women employed where the relationship of employer and employee comes into existence. There could be no manner of doubt that petitioner 1 has employed a number of employees for a purpose, namely, to carry out the duties assigned to them for the object for which Uttar Pradesh Co-operative Union has been established. There is no doubt that the provisions of Gratuity Act would apply to the employees of petitioner 1. The application of respondent 1 was certainly maintainable and the preliminary objection raised on behalf of the petitioners has correctly been rejected by the impugned order.”

19. There is no serious cavil between parties in this case that the Act of 1972 would apply to the Bank. Here, of particular relevance is sub-Section (6) of Section 4 of the Act of 1972, which must be quoted in the togetherness of Section 4, though most of the other sub-Sections might not be directly relevant. Section 4 of the Act of 1972 reads:

**"4. Payment of gratuity.—(1)** Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,—

(a) on his superannuation,  
or

(b) on his retirement or  
resignation, or

(c) on his death or disablement  
due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

*Explanation.*—For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so

employed throughout the year], the employer shall pay the gratuity at the rate of seven days' wages for each season.

*Explanation.*—In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time].

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(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.

(6) Notwithstanding anything contained in sub-section (1),—

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

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

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

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.”

20. Sub-Section (6) of Section 4 provides for contingencies, where the gratuity payable to an employee would stand wholly or partly forfeited. Clauses (a) and (b) of sub-Section (6) of Section 4 of the Act of 1972 would show that for an employee to be liable to a forfeiture of the whole or part of his gratuity, it is essential in each contingency that his services should have been terminated for some blameworthy conduct. Thus, except for a case of termination of service as contemplated under sub-Section (6) of Section 4, the right to receive gratuity cannot be forfeited in view of the Act of 1972.

21. Admittedly, in this case, the petitioner was never subjected to disciplinary proceedings or meted out any kind of punishment while in service. He was also never tried and convicted for a criminal offence on account of the lapses that the Bank impute to him in the documentation of loans sanctioned by him that turned non-performing assets with no avenue for the Bank to recover from the defaulters. He retired from service without the blemish of disciplinary proceedings or facing trial on criminal charges.

22. There is nothing in the Regulations of 1975 or under any other

provision of the law, that may authorize the respondents to withhold the petitioner's gratuity upon his retirement. Rather, that course is expressly forbidden by sub-Section (6) of Section 4 of the Act of 1972, except in cases of termination from service envisaged under the aforesaid provision. Therefore, there can be no deduction, and, a fortiori, no retention of the petitioner's funds to the extent of sum of gratuity is concerned. Given the admitted sum of gratuity payable to the petitioner, the sum of money retained and invested in the FDR by the Bank, pledging it in their favour, contingent upon the petitioner's success in securing realization of the bad loans involved, is manifestly illegal.

23. So far as the other post retiral benefits are concerned, there is nothing in the Regulations of 1975, or under any other provision of the law, by dint of which any of the petitioner's post retiral benefits may be withheld, except when the petitioner suffers punishment in the course of disciplinary proceedings. Admittedly, the petitioner was never proceeded with against by the Bank in the exercise of their disciplinary jurisdiction while in employment, nor was he tried on a criminal charge in relation to the lapses that the Bank now say he committed in the matter of documentation for the various loans, that were disbursed during time while the petitioner was in office. There are two sources of authority available with the Bank to recover from an employee or officer under the Regulations of 1975 for any loss caused to the Bank. One is under Regulation 84, occurring in Chapter VII of the Regulations of 1975, which relates to disciplinary proceedings, and, the other is Regulation 96, occurring in Chapter VIII relating to provident funds, gratuity, security, honorarium and pay advance.

24. The penalties, which may be imposed under Regulation 84 of the Regulations of 1975, read:

**“84. Penalties.-** (i) Without prejudice to the provisions contained in any other regulation, an employee who commits a breach of duty enjoined upon him or has been convicted for criminal offence or an offence under section 103 of the Act or does anything prohibited by these regulations shall be liable to be punished by any one of the following penalties :-

(a) censure,

(b) withholding of increment,

(c) fine on an employee of Category IV (peon, chaukidar, etc.).

(d) recovery from pay or security deposit to compensate in whole or in part for any pecuniary loss caused to the co-operative society by the employee's conduct,

(e) reduction in rank or grades held substantively by the employee,

(f) removal from service, or

(g) dismissal from service.

.....”

(emphasis by Court)

25. Regulation 96 (supra) reads:

**“96. Security.-** (i) Employees of co-operative societies shall furnish such security as may be specified by the Registrar under sub-section (1) of section 120 of the Act. It shall be recoverable in

lump sum or in such instalment as may be required by the Registrar.

(ii) Interest as admissible, on the savings bank account in the post office, shall be given on the amount of the security of the employee concerned.

(iii) When an employee ceases to be in the service of the society or dies, the security amount together with interest due shall be refunded to the employee and in the case of death, his heir, within a period of 3 months from the date of completion of audit following cessation of service or death:

Provided that the society shall deduct any claim of dues outstanding against such employee.

(emphasis by Court)

26. A conjoint reading of Regulation 84(i)(d) and the proviso to Clause (iii) of Regulation 96 would show that recovery can be made from the pay or security deposit to compensate the society in whole or in part for any pecuniary loss sustained on account of their employee's conduct as a measure of penalty or in case of conviction for a criminal offence. Thus, the power to recover under Regulation 84 is limited to cases, if as a measure of punishment in disciplinary proceedings, loss caused by the employee to the society is directed to be recovered from his pay or security deposit envisaged under Regulation 96. It can also be recovered in case of conviction for a criminal offence or an offence under Section 103 of the Act of 1965. The provisions of Regulation 84(i)(d) would show that the recovery of loss caused to the society can be made only in case of the employee being held guilty in

disciplinary proceedings and imposed with the penalty of recovery. The other restriction is that recovery can be made from his pay or security deposit to compensate the society for the loss sustained. Regulation 84 does not authorize recovery of the loss sustained by the society, even if the employee is held guilty from any other sum of money due to him, which include his post retiral benefits in their entirety.

27. The proviso to Clause (iii) of Regulation 96, authorizing the society to deduct any claim of dues outstanding against the employee, for a first would be complementary to the society's power to impose the punishment of recovery in consequence of disciplinary proceedings or conviction on a criminal charge under Regulation 84(i)(d), and, for a second, afford the society a source of authority to deduct or recover any claim or dues outstanding against the employee. The proviso to Regulation 96, therefore, also authorizes the society to recover any claim of theirs against an employee that constitutes outstanding dues, dehors the provisions of Regulation 84, but limits that general authority to recover the security deposit available in their hands.

28. There is, thus, no authority available to the Bank under the Regulations of 1975 to recover from any of the petitioner's post retiral benefits, whether in consequence of an order of penalty passed in their disciplinary jurisdiction, or as a result of the employee's conviction on a criminal charge. The Bank, in this case would, therefore, have no right to recover from the employee's post retiral benefits, including the ones other than gratuity, even if an order of recovery had been passed against him under Regulation 84 after

holding disciplinary proceedings, or in the event of him being convicted on a criminal charge. Here, admittedly, no proceedings were taken against him, disciplinary or before a Criminal Court, denuding the respondents of their authority to recover from whatever they could under Regulation 84.

29. The power to recover under Regulation 84, in the petitioner's case, would be limited to his pay or security deposit, if he were found guilty by the Bank of causing pecuniary loss to them in the exercise of their disciplinary jurisdiction. The petitioner while in service was admittedly not proceeded with against by the Bank in their disciplinary jurisdiction. The only other residual power available to the Bank to deduct any claim of dues outstanding against the petitioner available under the proviso to Clause (iii) of Regulation 96 would be limited to the petitioner's security deposit made under the aforesaid Regulation. The residual power of the Bank to recover his dues does not extend to effecting it from the petitioner's post retiral benefits.

30. It was open to the Bank to recover the losses they allege against the petitioner on account of their loans that have become non-performing assets, which they say they cannot recover, because of the petitioner's faulty documentation of the loan papers relating to the defaulters by instituting disciplinary proceedings against the petitioner while he was in service or proceeding against his security deposit, whatever be its worth. While in service, recovery could be made from the petitioner's pay also, besides the security deposit envisaged under Regulation 96. After the petitioner has retired, there is no authority available with the Bank, either to

institute any proceedings against the petitioner or recover from him the loss sustained due to flawed documentation of loans that the petitioner did, as the Bank claim. There is no authority available with the Bank in the exercise of their residual powers, or administrative authority etc., to recover from the petitioner, what during audit or administratively they have found to be blameworthy conduct of the petitioner in doing a flawed documentation of loans, impairing the Bank's remedies against the defaulters. The Bank ought have acted in time while the petitioner was in service.

31. This embargo upon the Bank's power to recover from the petitioner, applies to all kind of post retiral benefits due to the petitioner, available in the hands of the Bank; not just gratuity. Of course, gratuity is placed beyond pale of recovery by virtue of sub-Section (6) of Section 4 of the Act of 1972.

32. It is trite law that gratuity, pension, which is not involved here, and for that matter any other post retiral benefits due to an employee under the rules is property protected by Article 300A of the Constitution. It can be taken away by authority of law; not otherwise. It cannot be taken away by a mere administrative decision or executive instruction, or, still less, what the employer may think to be just and fair in the exercise of his general or supervisory powers as the Head of the Establishment. This principle is far too well settled to brook doubt and finds eloquent and authoritative enunciation in **State of Jharkhand and others v. Jitendra Kumar Srivastava and another, (2013) 12 SCC 210**. In **Jitendra Kumar Srivastava (supra)**, it has been held by the Supreme Court:

“16. The fact remains that there is an imprimatur to the legal principle that the

right to receive pension is recognised as a right in “property”. Article 300-A of the Constitution of India reads as under:

**“300-A. Persons not to be deprived of property save by authority of law.—**No person shall be deprived of his property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the constitutional mandate enshrined in Article 300-A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.

17. It hardly needs to be emphasised that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of the aforesaid Article 300-A. On the basis of such a circular, which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory Rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these Rules, the position would have been different.”

33. In **Jitendra Kumar Srivastava**, the principle, though stated in the context of pension and gratuity, also mentions leave encashment as property of the employee protected by Article 300A of the Constitution, but the umbrella would clearly apply to all post retiral benefits that

the employee is entitled to under the rules at the time of retirement.

34. In view of all that we have found, the impugned order, directing retention of a sum of Rs.19,25,500/- in fixed deposit, pledged in favour of the Bank, subject to the condition that the petitioner ensures recovery of the Bank's non-performing asset, the impairment of the avenues of recovery whereof has been attributed to the petitioner, cannot be sustained. The petitioner has to be paid all his post retiral benefits, without any abridgement or abatement.

35. In the result, this writ petition succeeds and is **allowed**. The impugned order dated 18.11.2024 and the impugned resolution of the Committee of Management dated 08.10.2024, insofar as these relate to the petitioner's claim to his post retiral benefits, are hereby **quashed**. The Secretary & Chief Executive Officer and the Committee of Management of the Bank are commanded by a mandamus to forthwith release and pay to the petitioner the sum of Rs.19,25,500/-, retained with them and invested in an FDR, together with the accrued interest on the instrument.

36. There shall be no order as to costs.

37. Let a copy of this judgment be communicated to the Secretary & Chief Executive Officer, District Cooperative Bank Limited, Ghaziabad and the resolution of the Committee of Management of the said Bank by the Registrar (Compliance).

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(2025) 6 ILRA 138

**ORIGINAL JURISDICTION  
CIVIL SIDE**

**DATED: ALLAHABAD 09.06.2025**

**BEFORE**

**THE HON'BLE J.J. MUNIR, J.**

Writ - A No. 19042 of 2024

**Ranjeet Kumar** ...Petitioner  
**Versus**  
**The Registrar Corporative Societies & Ors.**  
...Respondents

**Counsel for the Petitioner:**  
Rajendra Prasad Mishra, Ramakant Tiwari

**Counsel for the Respondent:**  
Ashok Kumar Lal, C.S.C.

**A. Service Law – UP Co-operative Societies' Employees Service Regulations, 1975 – Reg. 84 – Disciplinary proceeding – Punishment –Withholding of increment with cumulative effect – Principle of natural justice – Applicability – Petitioner took defence against the charges imposed – Non-speaking punishment order was passed – Validity challenged – No discussion about defence was made – Effect – Held, in the absence of a discussion on the particulars of the three charges, the petitioner's defence and reasons to conclude why the charges were held proved, the underlying decision of the Committee of Management, as expressed in the impugned order passed by the Secretary/Chief Executive Officer of the Bank, is certainly violative of natural justice. –The order, despite being verbose on other details, maintains critical silence on what went on in the mind of the decision makers to conclude that the charges against the petitioner are proved by the requisite standard of preponderant probability. (Para 16)**

**B. Constitution of India,1950 – Article 14 –Classification – Vires of Reg. 84 of Regulation, 1975 not classifying the penalty of withholding of increment as major penalty – How far Court can interfere in the absence of challenge to it – Held, the penalty of withholding increments with cumulative effect, that**