very right of granting relief. The said judgment consequently is of no aid to the respondent-State.

7. To conclude finally, the answer to the question posed at the very outset is rendered in the affirmative and it is held that the High Court has jurisdiction to grant bail to the petitioner, as an interim relief, in a writ of habeas corpus challenging his detention.

8. The question of law having been settled as above, these eight cases would now go back to the learned Single Judge for a decision on their individual merits.

D. S. Tewatia, J.—I agree.

H.S.B.

Before P. C. Jain & J. M. Tandon, JJ.

DARSHAN ENGINEERING WORKS, AMRITSAR,—*Petitioner.*

versus

THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT and others,—*Respondents.*

Civil Writ Petition No. 1102 *of* 1980.

March 24, 1983.

Constitution of India 1950—*Article* 19(1)(*g*)—*Payment of Gratuity Act* (*XXXIX of* 1972)—*Sections* 1(4), 2(q) & (*r*), 4(1)(b)—*Payment of Gratuity—Employee attaining the age of superannuation before the enforcement of the Act—Such employee—Whether entitled to gratuity—Employee attaining age of* 58 *years—Continuing in service—If entitled to gratuity—Fixing of a period of five years for payment of gratuity—Such fixation if violative of Article* 19(1)(*g*).

Held, that it is specifically provided under section 4(1)(b) of the Act that an employee shall be paid gratuity on his retirement or resignation. Sub-clause (b) of sub-section (1) is independent of sub-section (a) thereof. It is, therefore, clear that an employee will be entitled to gratuity in terms of sub-section (1) on his superannuation if he ceased to be an employee thereafter. Should the employee be appointed or continued in the employment after the date of his superannuation he will still be entitled to gratuity on his retirement or resignation when he would cease to be in the employment of the employer. The petitioner cannot disown the liability to pay the gratuity to the respondent under the Act on the ground that the latter had attained the age of 58 years before the Act came into force. (Para 2).

Held, that the age of superannuation is relevant for the purpose of payment of gratuity under section 4(1) of the Act where a workman ceases

to be an employee of the employer on his attaining the age of superannuation in terms of sub-clause (a) thereof. Sub-clause (b) of section 4(1) is independent of sub-clause (a). Under sub-clause (b) of section 4(1) the age of superannuation of an employee is not relevant for the purpose of payment of gratuity on his retirement or resignation. The respondent, therefore, cannot be refused gratuity in terms of section 4(1)(b) of the Act on this ground as well. (Para 3).

Held, that a gratuity is essentially a retiring benefit payable to a workman which under the statute [section 4(1)(h) of the Act] has been made payable on voluntary resignation as well. Gratuity is a reward for good, efficient and faithful service rendered for a considerable period. It is necessary that a long minimum period for earning gratuity in the case of voluntary resignation should be prescribed to curb the tendency on the part of the workman to change employment frequently after putting in minimum service qualifying for gratuity. A workman gains experience during the tenure of employment. An experienced workman is capable of securing another employment with better emoluments. He can also be tempted by other employers with more lucrative salary. The exit of an experienced workman would surely be a loss for his employer. Keeping in view the intrinsic object for making provision for payment of gratuity to a workman on his voluntary resignation and the ratio of the decisions of the Supreme Court detailed above, there is no escape from the conclusion that the minimum period of qualifying service for five years by a workman for being eligible for gratuity on voluntary resignation under section 4(1)(b) of the Act cannot be stamped sufficient long minimum in the context of making him stick to his existing employer and it does impose an unreasonable restriction on the fundamental right of the employer to carry on business and is, therefore, violative of Article 19(1)(g) of the Constitution. (Paras 11 & 12).

Petition under Articles 226 and 227 of the Constitution of India, praying that the petition be accepted, records of the case sent for and:

(a) *a writ in the nature of certiorari issued quashing the impugned orders Annexures P. 1 and P. 2;*

(b) *any other suitable writ, order or direction issued which this Hon'ble Court deems fit and proper in the circumstances of the case;*

(c) *filing of original/certified copies of Annexures P. 1 and P. 2 dispensed with;*

(d) *service of notice of motion dispensed with since the amount of gratuity found due from the petitioner is sought to be recovered as arrears of land revenue;*

(e) *recovery of the amount found due from the petitioner stayed till the writ petition is finally disposed of; and*

(f) *costs awarded to the petitioner.*

H. S. Brar, Advocate for G.O.I. (Union of India).

H. S. Brar, Advocate for Union of India.

JUDGMENT

J. M. Tandon, J.

1. Bakhshish Singh, respondent was born on December 17, 1913, and was employed by the petitioner on March 2, 1968. He submitted his resignation on November 9, 1978, with effect from December 10, 1978. His resignation was accepted. After his release from employment he claimed gratuity. The amount of gratuity offered by the petitioner (being short) was not accepted by the respondent with the result that he moved the Controlling Authority under section 7 of the Payment of Gratuity Act (hereafter the Act) for the determination of the amount of gratuity due to him. The Controlling Authority,—*vide* order dated October 18, 1979, computed the amount of gratuity payable to the respondent at Rs. 1,782. The petitioner filed an appeal against the order of the Controlling Authority (P. 1) which was dismissed by the appellate authority,—*vide* order dated March 6, 1890 (P. 2). The petitioner has assailed the orders P. 1 and P. 2 in the present writ petition.

Section 1(4) of the Act reads :—

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

The appointed date in terms of section 1 (4) of the Act is September 16, 1972. The Act, therefore, came into force on that date.

The terms 'retirement' and 'superannuation' are defined in section 2(q) and (r) of the Act respectively. These two sub-sections read:—

> "(q) 'retirement' means termination of the service of an employee otherwise than on superannuaion ;
>
> (r) 'superannuation', in relation to an employee means,—
>
> (i) the attainment by the employee of such age as is fixed in the contract or conditions of service as the age on the attainment of which the employee shall vacate the employment; and

(ii) in any other case the attainment by the employee of the age of fifty-eight years ;

Section 4 of the Act deals with the payment of gratuity. The relevant part of this section 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

2. The learned counsel for the petitioner has argued that under the Scheme as also the provisions of the Act gratuity is payable to an employee up to the date of his superannuation if fixed in the contract or condition of service and in the alternative up to the age of 58 years. The argument proceeds that the respondent had attained the age of 58 years before the Act came into force on September 16, 1972. The respondent is, therefore, not entitled to any amount by way of gratuity. The contention is without merit. It is specifically provided under section 4(1)(b) of the Act reproduced above that an employee shall be paid gratuity on his retirement or resignation. Sub-clause (b) of sub-section (1) is independent of sub-section (a) thereof. It is, therefore, clear that an employee will be entitled to gratuity in terms of sub-section (1) on his superannuation if he ceases to be an employee thereafter. Should the employee be appointed or continued in the employment after the date of his superannuation he will still be entitled to gratuity

on his retirement or resignation when he would cease to be in the employment of the employer. The petitioner cannot disown the liability to pay the gratuity to the respondent under the Act on the ground that the latter had attained the age of 58 years before the Act come into force.

(3) The learned counsel for the petitioner has contended that the gratuity is payable to an employee for the service rendered by him up to the age of his superannuation in terms of section 2 (r) of the Act. The argument proceeds that in the absence of any contract regarding the age of superannuation in the instant case the respondent shall be treated to have superannuated on attaining the age of 58 years. The respondent at best can claim gratuity for the service rendered by him up to the age of his superannuation. This contention is also without merit. The age of superannuation is relevant for the purpose of payment of gratuity under section 4 (1) of the Act where a workman ceases to be an employee of the employer on his attaining the age of superannuation in terms of sub-clause (a) thereof. It has already been held above that sub-clause (b) of section 4(1) is independent of sub-clause (a). Under sub-clause (b) of section 4 (1) the age of superannuation of an employee is not relevant for the purpose of payment of gratuity on his retirement or resignation. The respondent, therefore, cannot be refused gratuity in terms of section 4(1)(b) of the Act on this ground as well.

4. The last contention of the learned counsel for the petitioner is that section 4(1)(b) of the Act to the extent it provides for payment of gratuity to an employee who voluntarily resigns from the job after having put in continuous service for not less than five years is *ultra vires* Article 19 (1) (g) of the Constitution inasmuch as the qualifying service of five years prescribed therein is too short and unreasonable. The argument proceeds that the gratuity under the Act is a reward for good efficient and meritorious service rendered by an employee for a considerable period and there is no justification for directing the employer to pay gratuity to one who voluntarily resigns job after having put in five years of service. The provision contained in section 4 (1) (b) of the Act to the extent of voluntary resignation imposes an unreasonable restriction on the fundamental right of the employer to carry on business and is violative of the right guaranteed under Article 19 (1) (g) of the Constitution. Reliance has been placed on *Express Newspaper*

(*Private*) *Ltd. and others* v. *The Union of India and others* (1). *Amritsar Rayon and Silk Mills and their workmen* (2), *Wenger & Co. and others and their Workmen* (3), *and Messrs. British Paints (India) Ltd.* v. *Its Workmen* (4).

5. In *Express Newspaper's case* (supra) the provision of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, were under scrutiny. Section 5 of that Act deals with payment of gratuity and its relevant part reads :—

5. *Payment of gratuity.*—(1) Where—

(a) any working journalist has been in continuous service, whether before or after the commencement of this Act, for not less than three years in any newspaper establishment, and

(i) his services are terminated by the employer in relation to that newspaper establishment for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, or

(ii) he retires from service on reaching the age of superannuation, or

(iii) he voluntarily resigns from service from that newspaper establishment, or

(b) any working journalist dies while he is in service in any newspaper establishment, the working journalist or, as the case may be, his heirs shall, without prejudice to any benefits or rights accruing under the Industrial Disputes Act, 1947 (XIV of 1947), be paid on such termination, retirement, resignation or death, by the employer in relation to that establishment gratuity which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months.

(1) AIR 1958 S.C. 578.
(2) 1962 L.L.J. 224.
(3) 1963 L.L.J. 403.
(4) AIR 1966 S.C. 732.

6. In *Express Newspaper's case* (supra), their Lordships, while dealing with the provisions regarding the payment of gratuity to working journalists observed :—

> "When we come, however, to the provision in regard to the payment of gratuity to working journalists who voluntarily resigned from service from newspaper establishments, we find that this was a provision which was not at all reasonable. A gratuity is a scheme of retirement benefit and the conditions for its being awarded have been thus laid down in the Labour Court decisions in this country. — — — — —
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> — — — — —
>
> These were cases, however, of gratuity to be allowed to employees on their retirement. The Labour Court decisions have, however, awarded gratuity benefits on the resignation of an employee also. In the case of Cipla Ltd. v. Their Workmen (4-A) the Court took into consideration the capacity of the concern and other factors therein referred to and directed gratuity on full scale..... which included.....(2) on voluntary retirement or resignation of an employee after 15 years continuous service — — — —
>
> — — — — —
>
> It will be noticed from the above that even in these cases where gratuity was awarded on the employee's resignation from service, it was granted only after the completion of 15 years continuous service and not merely on a minimum of 3 years service as in the present case. Gratuity being a reward for good, efficient and faithful service rendered for a considerable period (*Vide* Indian Railway Establishment Code, Vol. I at page 614—Chapter XV, Para. 1503), there would be no justification for awarding the same when an employee voluntarily resigns and brings about a termination of his service, except in exceptional circumstances. — — — —
>
> — — — — —
>
> Where however, an employee voluntarily resigns from service of the employer after a period of only three years, there will be no justification whatever for awarding him a gratuity and any such provision of the type which has

(4-A)1955-2 LLJ 355 (I T Bom) Z-38)

been made in section 5(1)(a)(ii) of the Act would certainly be unreasonable. We hold, therefore, that this provision imposes an unreasonable restriction on the petitioners' right to carry on business and is liable to be struck down as unconstitutional."

7. In *Amritsar Rayon and Silk Mill's case* (supra) their Lordships of the Supreme Court found no illegality in the gratuity scheme directed to be introduced by the Labour Tribunal *inter alia* providing for the payment of gratuity on the termination of the employees service by the concern after he has put in five years' service or on his resignation after he has served 15 years continuously. The gratuity scheme was assailed but not the specific provision relating to qualifying service for payment of gratuity which was left intact.

8. In *Wanger and Co.'s case* (supra) their Lordships of the Supreme Court held as under :—

"Turning then to the merits of the scheme, we are satisfied that some modification must be made. The scheme made by the tribunal provides as under :

For service of less than two years. Nil.

For continuous service of two years and more, on termination of service of the workman for whatever reason except by way of dismissal for misconduct, involving moral turpitude — Fifteen days' basic pay for every year of completed service subject to a maximum of twelve months' basic pay."

The first criticism which Mr. Pathak has made against this provision is that the clause about misconduct involving moral turpitude is unusual and would create complications. This position is not disputed by the learned Attorney-General. We would, therefore, delete the words "involving moral turpitude" from the said provision. The second criticism made by Mr. Pathak against the provision is that the limit of two years imposed by the provision is unduly liberal. We think this criticism also is well-founded. Besides, a distinction must be made between

the termination of service caused by the employer and the termination resulting from the resignation given by the employee. We would therefore, provide that for termination of service caused by the employer, the minimum period of service for payment of gratuity should be five years, and in regard to this category of termination of service, we would like to add that if the termination is the result of misconduct which has caused financial loss to the employer, that loss should be first compensated from the gratuity payable to the employee and the balance, if any, should be paid to him. In regard to resignation, we would like to provide that if the employee resigns he would be entitled to get gratuity only if he has completed ten years' service or more. The rate presrcibed by the tribunal for the payment of gratuity and the ceiling placed by it in that behalf would remain the same."

9. In *British Paints (India) Limited's case* (supra), their Lordships of the Supreme Court observed as under :—

We now turn to the gratuity scheme. The points have been urged on behalf of the company in this connection. The tribunal has fixed five years minimum service in order to enable a workman to earn gratuity. This has been provided in the event of — (a) death of an employee while in service of the company, (b) discharge or voluntary retirement of an employee on grounds of medical unfitness, (c) voluntary retirement or resignation before reaching the age of superannuation, (d) retirement on reaching the age of superannuation, or (e) termination of service by the company for reasons other than misconduct resulting in loss to the company in money and property. The management objects to the minimum period being five years in the case of voluntary retirement or resignation before reaching the age of superannuation. It is contended that gratuity schemes usually provide for a longer minimum of service in the case of voluntary retirement or resignation before reaching the age of superannuation. We think that there is substance in this contention. The reason for providing a longer minimum period for earning gratuity in the case of

voluntary retirement or resignation is to see that workmen do not leave one concern after another after putting the short minimum service qualifying for gratuity. A longer minimum in the case of voluntary retirement or resignation makes it more probable that the workmen would stick to the company where they are working. That is why gratuity schemes usually provide for a longer minimum in the case of voluntary retirement or resignation. We may in this connection refer to the *Express Newspaper (Private) Ltd.* v. *Union of India* (5), where a short minimum for voluntary retirement or resignation was struck down.

Again in *Garment Cleaning Works* v. *Its Workmen* (6), 10 years minimum was prescribed to enable an employee to claim gratuity if he resigned.

In *Management of Wenger and Co.* v. *Their Workmen.* (7) a distinction was made between termination of service by the employer and termination resulting from resignation given by an employee. In the first case, the minimum was fixed at 5 years, in the second the minimum period was fixed at 10 years by this Court."

(10) In *Express Newspaper (Private) Limited's case* (supra) the provisions contained in section 5(1)(a) (iii) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, prescribing 3 years' as qualifying period for payment of gratuity on voluntary resignation was struck down as unconstitutional being unreasonable. In the remaining cases discussed above, their Lordships examined the gratuity schemes directed to be introduced by the Industrial Tribunal. The schemes providing for 15 years' as qualifying period for payment of gratuity on voluntary resignation were not interfered with. The schemes providing for less than 10 years as qualifying period for payment of gratuity on voluntary resignation were modified and the qualifying period in such cases was increased to 10 years. It is in this background that we are to examine if section 4(1)(b) of the Act to the extent of providing

(5) 1959 S.C.R. 12 at page 158. (AIR 1958 SC 578).
(6) (1962) 1 S.C.R. 711.
(7) A.I.R. 1964 S.C. 864.

gratuity on voluntary resignation is unconstitutional being *ultra vires* Article 19(1)(g) of the Constitution or not.

(11) A gratuity is essentially a retiring benefit payable to a workman which under the statute [section 4(1)(b) of the Act] has been made payable on voluntary resignation as well. Gratuity is a reward for good, efficient and faithful service rendered for a considerable period. It is necessary that a long minimum period for earning gratuity in the case of voluntary resignation should be prescribed to curb the tendency on the part of the workman to change employment frequently after putting in minimum service qualifying for gratuity. A workman gains experience during his tenure of employment. An experienced workman is capable of securing another employment with better emoluments. He can also be tempted by other employers with more lucrative salary. The exit of an experienced workman would surely be a loss for his employer. It has been aptly observed by Their Lordships of the Supreme Court in *Messrs British Paints (India) Limited's case* (supra) that "a longer minimum in the case of voluntary retirement or resignation makes it more probable that the workmen would stick to the company where they are working. That is why gratuity schemes usually provide for a longer minimum in the case of voluntary retirement or resignation."

(12) Keeping in view the intrinsic object for making provision for payment of gratuity to a workman on his voluntary resignation and the ratio of the decisions of the Supreme Court detailed above, there is no escape from the conclusion that the minimum period of qualifying service for five years by a workman for being eligible for gratuity on voluntary resignation under section 4(1)(b) of the Act cannot be stamped sufficient long minimum in the context of making him stick to his existing employer and it does impose an unreasonable restriction on the fundamental right of the employer to carry on business and is, therefore, violative of Article 19(1)(g) of the Constitution.

(13) Bakhshish Singh respondent left the service of the petitioner by submitting his resignation. He claimed gratuity under section 4(1)(b) of the Act. It has been held above that section 4(1)(b) of the Act to the extent it provides for payment of gratuity to a workman on his voluntary resignation after having rendered continuous service for not less than five years is violative of Article 19(1)(g) of the Constitution.

(14) In view of discussion above, the impugned orders P. 1 and P. 2 directing payment of gratuity to Bakhshish Singh respondent on his voluntary resignation under section 4(1)(b) of the Act cannot be sustained. The writ petition is allowed and the impugned orders P. 1 and P. 2 quashed. No order as to costs.

Prem Chand Jain, J.—I agree.

S.C.K.

Before S. S. Sodhi, J.

GIAN SINGH ATWAL,—*Petitioner.*

versus

S. N. TIWARI and others,—*Respondents.*

Civil Revision No. 742 of 1983.

April 5, 1983.

Oaths Act (XLIV of 1969)—Sections 4 and 6—Witness reluctant to take oath in a particular form—Rent Controller discharging such a witness—Order discharging witness—Validity of.

Held, that the form of the oath or affirmation that a witness is required to make is not necessarily confined to those given in the Schedule. It can, in terms of the proviso to section 6(1), be in a different form common to the class of persons to which the witness belongs. Further, the omission by a witness to take any oath or make any affirmation or any other irregularity in the form in which the oath or affirmation is administered would not invalidate his evidence. What is more such omission or irregularity shall not effect the obligation of a witness to state the truth. There is, thus, no escape from the conclusion that mere irregularity in the form of the oath or affirmation that a witness may make or indeed his omission or refusal to take any oath or make any affirmation would not justify the court in refusing to record his evidence or discharging him on this account. (Para 6).

Petition Under Section 15(5) of Act East Punjab Urban Rent Restriction Act and section 115 C.P.C. & under Article 227 of the Constitution of India for revision of the Order of the Court of Shri B. S. Teji Additional Sessions Sub-Judge Exercising The Power of Rent Controller Under the East Punjab Urban Restriction Act, 1949, Hoshiarpur, dated 1st March, 1983 discharging the witness.