



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. _____ OF 2025
(Arising out of SLP (C) No. 19581 of 2023)

**THE ASSAM FINANCIAL
CORPORATION LIMITED & ORS.**

...Appellant (s)

versus

BHABENDRA NATH SARMA & ORS.

...Respondent(s)

J U D G M E N T

J.K. Maheshwari, J.

- 1) Leave granted.
- 2) Challenging the judgment¹ passed by the Division Bench of the High Court² in Writ Appeal No.260 of 2022 preferred by Assam Financial Corporation Limited (hereinafter referred to as ‘AFC’), the present appeal has been filed.
- 3) The fact situation shorn of details is such that the Respondents, who were the original writ petitioners before the High Court, were employees of the AFC and retired on superannuation between 2018–2019. Upon retirement, retiral

1 Impugned Judgment dated 25.07.2023

2 Gauhati High Court

dues were paid including gratuity as per the regulations of the AFC, particularly the Assam Financial Corporation (Payment of Gratuity to Employees) Regulation, 1964 (hereinafter referred to as '**1964 Regulations**') read with the Assam Financial Corporation (Amendment) Staff Regulations, 2007 (hereinafter referred to as '**2007 Staff Regulations**'). Their plea before the High Court was that they were entitled for gratuity as per Section 4(5) of the Payment of Gratuity Act, 1972, but the ceiling for gratuity as per AFC's internal regulations were not in sync with the Act.

4) The 2007 Staff Regulations of the AFC initially provided a ceiling of Rs. 3.5 Lakhs for payment of gratuity, which was subsequently enhanced to Rs. 7 lakhs *vide* Office Order No. AFC/Estt/497/2012-13/1028 dated 25.07.2012 in parity with the Government of Assam employees (hereinafter referred to as '**2012 Office Order**'). The relevant portion of the said office order is quoted for reference:

"14. Gratuity

The present limit of Death cum Retirement Gratuity is enhanced up to a maximum of Rs. 7.00 lakh under the existing provisions of the Corporation as per the Gratuity Act in line with Govt. of Assam employees."

5) The Division Bench of the High Court while passing the impugned judgment, confirmed the view taken by the learned Single Judge³ granting benefit of the enhanced gratuity in terms of the provisions of the Payment of Gratuity Act, 1972.

6) Learned Single Judge has dealt with the Assam Financial Corporation Group Gratuity Assurance Scheme (hereinafter referred to as '**Scheme**') along with the 1964 Regulations as well as the 2007 Regulations and found that the Respondents were 'employees' within the meaning of the Payment of Gratuity Act, 1972 and in view of the non-obstante clause as contained in Section 14, the Respondents are entitled to the higher ceiling of gratuity which is payable under Section 4 of the Payment of Gratuity Act, 1972.

7) We have extensively heard the learned counsel for the parties and considered the material placed on record. It is informed by the learned counsel for the parties that after the passing of the 2012 Office Order, the upper ceiling for payment of gratuity to employees of AFC remained as Rs. 7 Lakhs and it was not until 2022 that the AFC considered enhancing the said

3 Judgment dated 08.04.2022 in W.P. (C)No. 3697 of 2020

limit. It is also urged that the Respondent – employees all retired in the interregnum, when the ceiling for payment of gratuity was Rs. 7 Lakhs and hence they cannot seek parity with the State Government Employees or seek a higher amount of gratuity than the ceiling was fixed at Rs. 7 Lakhs.

8) In this regard, the Memorandum for the Board being Memo No. 6335 dated 02.03.2022 with the subject ‘Enforcement of Gratuity at par with Government of Assam’ (hereinafter referred to as ‘**2022 Memorandum**’) was placed for our consideration along with the counter affidavit, which is relevant. It is a memorandum by the Managing Director for consideration by the Board of Directors of the AFC to enhance the limit of gratuity. The said Memorandum is reproduced as thus:

“ASSAM FINANCIAL CORPORATION
MD.SHAH ROAD PALTAN BAZAR
GAUWAHATI 8

Memo No 6335

Date 02.03.2022

MEMORANDUM FOR THE BOARD

Subject No 08 Enforcement of Gratuity at par with
Govt. of Assam

ROP 2017 and in line with AFC Staff Regulation

This is to apprise the Board that the employees of the Corporation is currently drawing gratuity ceiling amounting to Rs.7.00 Lakhs only since

last enhancement vide Office order of the Corporation 23.08.2012. It is to further apprise the Board that the payment of gratuity amount is governed by the Gratuity Act, 1972, amended from time to time under the Ministry of Law and Justice, Govt. of India. All the Govt. Organizations, PSU etc. in principle fall under the ambit of the above Gratuity Act. As per last amendment the gratuity ceiling for central govt. employees is Rs.20.00 Lakhs (w.e.f. 29th March, 2018) for the retired employees. However the gratuity ceiling adopted by the Govt. of Assam as per last ROP (year 2017) is Rs.15.00 Lakhs. Now from the data and information collected from different PSUs of Assam it is revealed that some of the PSUs of Assam follow the Gratuity ceiling of Rs.20.00 Lakhs as per central Govt. employees and others follow that of Govt. of Assam which is Rs.15.00 Lakhs at present. The Corporation sought information in this regard from 7 Nos of PSUs of Assam. The data gathered are noted below:

<u>Name of the PSU</u>	<u>Gratuity Ceiling</u>
01 Assam Tourism Development Corporation	Rs.15.00 Lakhs
02 AIDC (Assam Industrial Dev. Corporation)	Rs.20.00 lakhs
03 Assam Fishery Dev. Corporation	Rs.20.00 lakhs
04 Assam Mineral Dev. Corporation	Rs.15.00 lakhs
05 Assam Text Book Corporation	Rs.15.00 lakhs
06 ASTC (Assam State Transport Corporation)	Rs.20.00 lakhs
07 Assam Petrochemicals	Rs.20.00 lakhs

We have received written communication from 02,04,06 & 07 as on date.

It is a long demand of AFC employees to enhance the old gratuity limit to the limit of Gratuity Act.

After receipt of above information the following observations have been made.

i) The employees of the Govt. of Assam have been drawing gratuity to the maximum amount of Rs.15.00 lakhs.

ii) Statutory Audit has also pointed out the gratuity disparity in their last audit report published in the Annual Report for the year 2019-20.

iii) As per staff regulation of AFC, the Corporation is to follow Govt. of Assam Rules to pay the gratuity amount to the employees of the Corporation on superannuation. The gratuity ceiling for the Assam Govt. Employees at present is Rs.15.00 lakhs.

For the greater interest of the employees of the Corporation LICI has been entrusted under the Group Gratuity Cum Cash Accumulation Scheme. On our request the LICI has put forward the approximate estimate dtd. 21.02.2022 for the additional expenses required for enhancing the limit from Rs.7.00 lakhs to Rs.15.00 lakhs.

a) Life Coverage premium	Rs.74,934.00
b) Additional Contribution	Rs.1,97,40,904.00
c) Current Service Cost	Rs.13,60,817.00

As per discussion held with the concern person of LIC it is to be informed that the above amount can be paid in phased manner preferably within two years.

Keeping the above in view it is proposed to enhance the present limit of gratuity from Rs.7.00 lakhs to Rs.15.00 lakhs. The additional payable premium amount as mentioned above is to be paid in phased manner within 2 (two) years if the Board approve the enhancement of Gratuity limit to Rs.15.00 lakhs.

Submitted for consideration and approval of Board.”

9) The Board of Directors of the AFC considered the proposal of the Managing Director in their 395th meeting which was held on 08.03.2022. After perusal of the same, the Board made certain observations which are reflected in the Minutes of the said meeting as follows:

**“Item No. 09:
Enhancement of Gratuity at par with Govt.
of Assam ROP 2017 and in line with AFC
Staff Regulation.**

The Board considered the Memo No.6335 dt. 02.03.2022 regarding enhancement of Gratuity at par with Govt. of Assam ROP-2017 and in line with AFC Staff Regulation and after detailed deliberation decided to defer the proposal. The Board also decided that the proposal shall be placed before the Board after detail and proper study in the next financial year.”

10) It is pertinent to observe that in the 2022 Memorandum, the Managing Director of the AFC acknowledged the provisions of the Payment of Gratuity Act, 1972 and in particular said that as per Staff Regulations of AFC, the Corporation is required to

follow the Government of Assam Rules to pay gratuity amount to the employees of the Corporation on superannuation which had specified the ceiling of Rs.15,00,000/- at the relevant point of time for State Government employees.

11) Learned senior counsel for the appellants referring the notifications issued by the Governor of Assam dated **24.08.2012** and **17.01.2018** resisted the claim by stating that the Board of Directors of State Level Public Enterprise may adopt the provision regarding revision of pay/pay scales and allowances after examining the financial involvement (*sic*) with respect to such pay revision. It is further clarified that it be allowed with the approval of the concerned Administrative Department only when the Board of Directors agree to bear such expenses. In view of the above, it is urged by the Appellant AFC that since the Board of Directors had decided in its meeting dated 08.03.2022 to defer the decision for enhancing the limit for payment of gratuity, benefit of revised ceiling of gratuity payment similar to what is available to State Government employees cannot be granted to the employees of the AFC.

12) After hearing and considering the notifications issued by the Hon'ble Governor, we have to examine the 2007 Staff Regulations, in particular, Clause 107 whereof deals with gratuity. The aforesaid provision is relevant, therefore, reproduced as under:

"107. "GRATUITY:

i) *An employee to be eligible for payment of Gratuity must complete service in the Corporation for minimum period of 5 years confirmed service.*

ii) *Death-cum-Retirement Gratuity is to be paid at the rate of 16.5 times of the pay (Basic + DA) subject to maximum of Rs.3.50 lacs or as notified by the Govt. of Assam from time to time provided employees have rendered 33 years of service on the date of superannuation or in the event of death.*

iii) *Employee with less tenure of service will receive gratuity equal to half a month's pay (Basic + DA) for each completed 6 (six) monthly period of service in the Corporation subject to maximum of 15(fifteen) months pay (Basic + DA) or Rs.3.50 lacs whichever is less or as may be notified by the Govt. of Assam from time to time."*

13) After perusal thereof, it is clear that as far back as in 2007, the Death-cum-Retirement Gratuity was to be paid as per the formula prescribed therein, subject to a maximum of Rs. 3.5 Lakhs or as may be notified by the Government of Assam from time to time.

14) Similar provision has been made in case the period of 33

years of service has not been completed as per sub-clause (3) which also indicates that in addition to the formula as prescribed, the gratuity be paid subject to a maximum limit of 15 months' basic pay or 3.5 Lakhs, whichever is less, or as may be notified by the Government of Assam from time to time.

15) This limit of Rs. 3.5 Lakhs for AFC employees was enhanced to Rs. 7 Lakhs in the 2012 Office Order which has been quoted above in paragraph 4.

16) Once the Regulation itself prescribes for grant of gratuity as per the formula therein subject to the ceiling fixed for the employees by the AFC or as notified by the Government of Assam, in our view, looking to the said benevolent provision made in the 2007 Regulations for the benefit of the employees, we cannot agree with the Appellant's submission that by virtue of notification dated 24.08.2012 and 17.01.2018 issued by the Hon'ble Governor of Assam the payment of enhanced pay scale / allowances must first be approved by the Board of Directors since it cannot override the 2007 Regulations. In our view, the restriction made in payment of gratuity is not justified. Once the regulation itself makes the provision to grant amount of

gratuity in terms of the formula contained therein with a limit of Rs. 3.5 Lakhs (later increased to 7 Lakhs) or as notified by the Government of Assam from time to time, in our view, interpretation of the regulation must be made which is in favor of the employees.

17) It has been urged before us that even though Regulation 107 of the 2007 Regulations mentions the ceiling for gratuity notified by the State Government, the said enhanced ceiling does not automatically apply to the AFC. However, the fact situation of the present case cannot be lost sight of. Admittedly, the ceiling for payment of gratuity as per the 2007 Regulations was fixed at Rs. 3.5 Lakhs, which was enhanced to Rs. 7 Lakhs in terms of the 2012 Office Order. Thereafter, the AFC took no initiative to bring parity in the ceiling for payment of gratuity while the Government of Assam kept enhancing the said limit in terms of the Payment of Gratuity Act, 1972 and it was enhanced to Rs. 15 Lakhs in 2017 itself.

18) Additionally, it goes without saying that Regulation 107 of the 2007 Regulations states '*...maximum of Rs.3.50 lacs or as notified by the Govt. of Assam from time to time...*'. In such a

case, the inescapable conclusion is that the maximum limit for payment of gratuity has to be Rs. 3.5 Lakhs (later enhanced to Rs. 7 Lakhs) or the limit prescribed by the State Government and in case where the limit prescribed by the State Government is higher than the limit set by the AFC, the import of Regulation 107 has to be interpreted in such a manner that the benefit of the higher limit set by the State Government has to be given to the employees of the AFC.

19) Apart from the above reasoning, we have also taken into consideration equitable treatment of the Respondent – employees. It goes without saying that the AFC chose not to bring about parity in ceiling for payment of gratuity prescribed within its regulations and the ceiling set by the State Government. It has been informed that now the AFC has decided to increase the ceiling for payment of gratuity at par with the State Government, but since these Respondents retired in the interregnum when the limit was Rs. 7 Lakhs, they are not entitled to a higher ceiling. In this fact situation, it would be absolutely inequitable treatment for the Respondents to suffer at the behest of the AFC's lethargy. In any case, we have found above that the import of Regulation 107 of the 2007

Regulations is such that the higher limit for gratuity set by the State Government shall apply to the AFC.

20) Both the Learned Single Judge and the Division Bench of the High Court seem to have been impressed upon the submission of the Respondents that the Respondents are 'employees' within the meaning of Section 4 of the Payment of Gratuity Act, 1972 and that therefore, the ceiling for gratuity under the said Act must apply, particularly in view of the *non-obstante* clause as contained in Section 14 of the said Act. However, even though arguments have been pressed challenging the said findings, we are, at present, not expressing any opinion regarding the same. We say so, because when the regulations themselves (particularly Regulation 107) import the higher ceiling for payment of gratuity as accepted by the State Government under the Payment of Gratuity Act, 1972, the right of the Respondents flows from the said regulation and the question as to whether the Payment of Gratuity Act itself applies to the AFC or not may be considered in an appropriate case.

21) In view of the foregoing, we agree with the conclusion, by

our separate reasons, as reached by the Learned Single Judge and the Division Bench of the High Court and dispose of the present appeal. As per above discussion, the gratuity be calculated and paid within six months from today as directed.

22) The appeal stands disposed of accordingly. Pending application(s), if any, shall also stand disposed of.

....., J.
[J.K. MAHESHWARI]

....., J.
[VIJAY BISHNOI]

**New Delhi;
October 14, 2025.**