

**PLEASE SUBSCRIBE TO THIS LINK AND LIKE THIS PAGE IN FACEBOOK, AND SHARE IT WITH YOUR FRIENDS AND RELATIVES: <https://www.facebook.com/BankBachaoDeshBachao/>**

*Editorial*

## **DARK NIGHTS!**

This editorial is being written when nature and the land are busy welcoming the divine with all its blissful manifestation. The observance of Navratri will be followed by a dark fortnight, which will finally culminate in the emergence of the festival of lights, Diwali. Common Bond extends its Diwali greetings to the membership of AIBOC and all its readers and well-wishers.

The prevailing situation in the global theatre and the national economy forced us to conceptualise the days as 'Dark Nights' even though we know this is the festivity time. The Chief Economic Advisor to the Government of India, Shri Sanjeev Sanyal, shared that the government is working on privatizing the public sector banks, retaining only four, viz., SBI, PNB, Indian Bank and Bank of India in its fold. This will virtually dismantle the very structure of the public sector and welfare banking and may ultimately ensure that the entire banking space is occupied by the same group of people who have virtually knocked down the Indian banking system by willful default, fraud and by adopting all conceivable means to empty the banks coffer.

We are trepidation about running and writing in this journal as the fourth pillar of democracy is under virtual seize. The recent happenings

involving a web news portal and its senior journalist and official are sending cold waves down the spine even of your editorial team. We are unaware which article or write-up will be branded as an anti-national writing, under the provisions of UAPA. The efforts to muzzle the free press is a warning signal for the democratic institutions, and the absence of a democratic environment will adversely affect even the trade union functioning as the labours get the right to voice their dissent after years of struggle, often bloody and inseparably linked with the struggle for establishing a welfare-oriented democratic set-up.

The international situation is also alarming. We are adapted to the year-old Ukraine war being fought by a band of hired mercenaries under the guise of war between two nation states destabilising the world economy and fuelling the fear of stagflation spreading from shore to shore. Such destabilisation in the world economy will harm the all India banking scenario.

The flame of war has now spread to the Middle East and has claimed the lives of over 4,000 innocents on both sides of the war theatre, with even children not spared. There is a possibility of escalation of this flare, which may adversely affect the world economy. Oil prices have already

***A JUG FILLS DROP BY DROP***

started moving upwards, which may add more pressure to the inflationary spiral and negatively impact the delicate demand-supply equilibrium.

In the banking industry, reports are pouring in about suicides and resignations by unfortunate officers unable to cope with the unrealistic targets and constant brow-beating by senior officials. In certain zones and circles, the situation is alarming. In the public sector bank space, seniors are spending sleepless nights, burdened with a steep hike in their medical insurance premiums.

We are afraid that, the festival may not look

as glittering as it is made out to be in an age of rampant commercialization. It is left with us to sharpen our weapons and prepare for an impending battle that will pronounce the victory of the good over the evil, the basic message of the festival.

Close your rank, comrades! Enjoy your time with family! But do not lay down your arms. We are the torchbearer. We must pierce through the 'Dark Night' to welcome the refreshing dawn. ■

R March on comrades,  
R NationAgainstPrivatisation  
R BankBachaoDeshBachao

## ECONOMY

*The excerpt is taken from a write-up of Prof. Arun Kumar who is a Retired Professor of Economics at the Jawaharlal Nehru University.*

### GDP GROWTH: THE GAP BETWEEN REALITY AND RHETORIC

*What the true Gross Domestic Product of India is and at what pace it is growing remains in the realm of speculations and contentions.*

On August 31, the official growth rate of the Indian economy was announced to be 7.8 percent.

The figure immediately came under a lot of criticism by economists and other experts.

The Chief Economic Advisor to the Prime Minister, V. Anantha Nageswaran, and two top officers in the Economic Advisory Council, Dr Bibek Debroy and Aditya Sinha, soon responded to the criticism, implying it is ill-informed.

This reaction was expected since the government has been at pains to claim that the Indian economy is doing well since it is the fastest-growing large economy. Therefore, any criticism of the growth rate dents the government's credibility.

#### THE ARGUMENTS

Critics have argued that in the quarterly Gross Domestic Product (GDP) data, there is a category called '*discrepancy*'. Compared to the previous year's (2022-23) number, its share in the GDP has risen by a staggering 6.2 percent.

The shares of all other categories have declined. Critics point out that this implies the existence of substantial errors in the GDP growth figure of 7.8 percent.

Officials claim that the discrepancy is nothing unusual and not a cause of worry since it gets taken care of over time. The following explanation is offered for its occurrence.

*Critics have argued that in the quarterly Gross Domestic Product (GDP) data, there is a category called 'discrepancy'. Compared to the*

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

*previous year's (2022–23) number, its share in the GDP has risen by a staggering 6.2 percent.*

There are two ways of measuring GDP, the income and the expenditure methods. The former is taken as the more accurate or dependable figure. So it is suggested that 'discrepancy' represents the difference between the figures obtained from the two methods. To bolster the government's point of view, it is argued that international agencies like the United Nations, the International Monetary Fund and multi-national banks accept the official figures.

The critics are accused of cherry-picking the data. It is stated that when the growth rate turns out to be low, as during the pandemic, then the critics do not raise doubts about it, but the critics point to high unemployment figures to argue that the growth rate cannot be as high as the official data implies.

The officials counter this by pointing to the recent Periodic Labour Force Survey (PLFS) data, which shows an increase in the labour force participation rate in various relevant age groups.

## **OFFICIAL METHODOLOGY**

These contending views can only be reconciled by going to the basics of GDP measurement. The official methodology for measuring GDP quarterly can help resolve the conundrum.

The official document spelling out the Methodology of Compiling Quarterly GDP Estimates (July 2017) can help understand the issues. It says:

*"Quarterly releases include GDP estimates compiled through production approach (QGDP) and quarterly expenditures of GDP (QGDE) compiled through expenditure approach. The QGDP estimates from the production side is estimated as QGVA at basic prices + net taxes*

*on products.*

*"The differences between the QGDP estimated by economic activity as QGVA at basic prices plus net taxes on products and the QGDE estimated from the expenditure side is shown as a discrepancy."*

The above quote gives the official definition of discrepancy.

Further, the official document mentions three factors that need to be taken note of regarding the production-side calculation:

1. The production approach used for compiling the QGVA estimates is broadly based on the benchmark-indicator method.
2. In this method, estimates of Gross Value Added (GVA) are compiled for each of the industry groups.
3. In general terms, quarterly estimates of GVA are extrapolations of the annual series of GVA.

These three points clarify that for quarterly GDP estimates using the production approach— which the officials say is the more reliable method— most current data is not available.

Since current data is unavailable, benchmark indicators from an earlier reference year have to be used. Currently, these indicators are very old since recent surveys have not been done.

*The shares of all other categories have declined. Critics point out that this implies the existence of substantial errors in the GDP growth figure of 7.8 percent.*

In other words, these are dated and do not represent the current reality. Further, the

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

methodology states that extrapolations of the annual series of GVA of previous years obtain current figures.

So, if the previous year's figures are also incorrect, how can their extrapolation be correct? Finally, in some cases, the procedure adopted is to make annual projections and then divide them by four to give the quarterly figures. So, errors in the previous year's figures would be reproduced.

### **SHOCKS UNDERMINE THE METHOD**

The above methodology relies on a smoothly functioning economy that does not undergo unexpected changes. In other words, it will work only when there is no economic shock.

If there is a shock, then neither will the '*benchmark indicators*' be valid nor will it be correct to extrapolate from the past.

But the Indian economy has suffered shock after shock since 2016. Demonetisation in 2016 was the first, then in 2017, there was the structurally faulty Goods and Services Tax (GST).

In 2018, the non-banking financial company (NBFC) crisis and, finally, in 2020, the sudden lockdown. These shocks would have impacted the old benchmark indicators, invalidating their use. Each of these shocks differentially impacted the unorganised sector compared to the organised sector, thereby changing their ratios.

### **NEED FOR FRESH SURVEYS**

New indicators are required based on fresh surveys. But no new survey of the unorganised sector has been conducted since 2015. Even the census has not been conducted in 2021. So the method used is seriously flawed. Finally, projecting the past annual numbers and dividing by four to get the quarterly figure is also seriously flawed when there is a shock to the economy at some point during the year.

So, not only is the expenditure side in error, as is officially admitted, but even the production approach estimate will give flawed numbers. Under such circumstances, how can the latter be used as a controlling number to calculate the discrepancy? Numbers from both the methods are seriously flawed.

It is not even that the nature of the different shocks was the same. Thus, the impact of each of them on the economy differs. Hence, each has to be separately factored into the calculations.

In other words, errors are getting compounded and reliable GDP numbers are unavailable, especially the quarterly numbers, when the economy has undergone shocks.

### **OTHER CONSIDERATIONS**

The production approach to measuring GDP requires estimating the contribution of the various sectors of the economy. There are nine major sectors which are further broken up into organised and unorganised, and public and private. Each sector and sub-sector requires a separate method. So, 27 different methods are required.

The public sector can be read off from the official data, but that still leaves an estimation of 18 sub-sectors. Each of these is further broken down into different industries and activities.

*The official argument that the data from the international agencies support the Indian official numbers is neither here nor there. The international agencies or the RBI do not collect data independently. They use the official data. So, it is unsurprising that their numbers are close to the official numbers. They reproduce the errors in the official data.*

For instance, transportation can be via railways, boats, aircraft, rickshaws, push carts and so on. Quarterly data for many of them are not available. That is why projections are required using what is

called high-frequency data.

However, most high-frequency data is from the organised sectors and not the unorganised sectors. So, the accurate picture of the economy is not available, given that the data of the unorganised sector is not independently estimated.

The official argument that the data from international agencies support the Indian official numbers is neither here nor there. International agencies or the Reserve Bank of India do not collect data independently. They use the official data. So, it is unsurprising that their numbers are close to the official numbers. They reproduce the errors in the official data.

Further, the criticism that the critics do not say anything when the official GDP growth comes out to be low is incorrect. The same errors are pointed to, and it is argued that the growth rate is even lower than the official projections.

Finally, due to the capital-intensive nature of the organised sector, it only generates a little employment. So its growth, which is what GDP captures, leads to little additional direct

employment. Because of poverty and lack of social security, workers have to resort to self-employment, and then they get counted as employed. The system as such is not generating work for them but that does not reflect the reality of unemployment.

## CONCLUSION

To conclude, India's GDP numbers need to be recalculated with a change in methodology. The argument that the discrepancies get evened out is not a strong one. Discrepancy requires one of the two GDP numbers to be correct. But when both have big errors, what does the discrepancy number stand for?

*The criticism that the critics do not say anything when the official GDP growth comes out to be low is incorrect. The same errors are pointed to, and it is argued that the growth rate is even lower than the official projections.*

In brief, what the true GDP is and at what pace it is growing remains in the realm of speculations and contentions.■

## INCREASING EMPLOYMENT IN PRIVATE SECTOR BANKS

### PRIVATE SECTOR BANK EMPLOYEES COUNT POISED TO SURPASS PUBLIC SECTOR BANKS

Private Sector Banks (PVBs) in India are rapidly closing in on Public Sector Banks (PSBs) in terms of employee count, with potential overtaking expected by 2024. Despite PSBs record profit earning, the employee count decline and stagnation underlines a curious trend.

The distribution of employees in Private Sector Banks (PVBs) is rapidly inching to surpass the total employee count of the Public Sector Banks (PSBs). PVBs with an employee base of 7,45,000

are only a few thousand away from that of PSBs, which reported the workforce strength of 7,56,000 as of March 2023.

Reserve Bank of India's Handbook of Statistics on the Indian Economy 2022-23 released on September 18 reported about the distribution of employees across Public Sector banks, Private Sector banks, Foreign banks, Rural Regional banks, Commercial banks, Small Finance banks and Payments banks.

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH



## Decadal Low and High

The employee distribution, as per the RBI report, reflects a striking difference in the past decade. Employee count can be seen constantly decreasing in the PSBs, while PVBs have witnessed a continuous rise.

PSB employee distribution comprising Officers, Clerks, and Subordinates in 2012-13 was 8,86,490, whereas the count in PVBs was 2,29,124. The difference of employees count between PSBs and PVBs in 2012-13 was 6,57,366, which has come down to a meagre 11,032 in FY 2022-23.

This rapid squeeze in the difference of employee distribution can be seen in lieu of the massive decline of recruitments in the PSBs and slow transition to outsourcing of the workforce.

## THE UNEVEN PATTERN

An uneven pattern can be traced in the profile of PSB employee distribution. While constant decline in the total employees working with PSBs, the number of those in officer's grade has risen from 3,34,061 in 2012-13, to 3,97,318 in 2022-23. While the clerical staff has declined from 3,98,801 in 2012-13 to 2,57,771 in 2022-23.

The trend for clerical staff allegedly indicates the cutting short of the clerical vacancies and replacing them with the business correspondents.

## OVERLAPPING THE PSBS

If the trend continues in the current financial year (FY24), the tally of employees working with private sector banks may surely surpass that of PSBs by March 2024.

The Reserve Bank of India (RBI) data shows constant growth of the numbers of employees on the contrary to the PSBs that are gradually contracting their employee base.

This came despite good functioning of the PSBs when their profit touched ₹ 1,04,649 crore in 2022-23. The 12 PSBs witnessed a 57% increase in total profit compared to ₹ 66,539.98 crore earned in 2021-22.

The report also highlighted the interesting emergence of Small Finance Banks (SFBs) since FY 2017-18. The SFBs are seen shifting gears with their tally growing over three-fold in the past five years from 39,108 in March 2018 to 1,34,494 as of March 2023.

## CURRENT BANKING / FINANCIAL NEWS AT A GLANCE

➔ **Four large public sector banks will continue to exist in future: Sanjeev Sanyal :** "Four large public sector banks will continue to exist even in the future and will continue to play an important part in the Indian banking system," Sanjeev Sanyal, Member of the Economic Advisory Council to the Prime Minister (EAC-PM), told Moneycontrol in an exclusive interview on October 11. India currently has 12 public sector banks: Bank of Baroda, Bank of India, Bank of Maharashtra, Canara Bank, Central Bank of India, Indian Bank, Indian Overseas Bank, Punjab & Sind Bank, Punjab National Bank, State Bank of India, UCO Bank, and Union Bank of India. Sanyal added that at a strategic level, he believes some parts of the Indian banking system will continue to be government-owned. "Having said that, I would be in favour that

over a period of time, the private segment of the banking system grows, so that a larger share of the banking system is in private hands," said Sanyal.-moneycontrol.

➔ **Calcutta High Court voids SBI's sale of Atibir Industries' loans to CFM ARC :** The Calcutta High Court has invalidated the sale of a loan belonging to Atibir Industries by the State Bank of India (SBI) to CFM Asset Reconstruction Company. This decision comes as SBI had categorised the loan as a non-performing asset (NPA) in 2020 when a central bank circular prohibited banks from classifying accounts as NPAs due to the ongoing pandemic. SBI had sold ₹341 crore of principal loan outstanding from bankrupt Atibir Industries to CFM ARC for ₹ 250

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

crore through a Swiss challenge auction in March this year, which will now have to be reversed. Justice Sabyasachi Bhattacharya in the order on the writ petition filed by Atibir Industries observed that the bank acted hastily in completing the assignment process in favour of CFM ARC. - economic times.

➔ **Bank of Baroda issues clarification after RBI bars PSU bank from onboarding new customers through BoB World mobile app :** The Reserve Bank of India has barred the Bank of Baroda (BoB) from onboarding new customers through its 'Bob World' mobile app following material supervisory concerns. In a notification to t...

## CIRCULARS

- 38 dated 30th September, 2023:** Text of UFBU Circular No. 2023/14 dated 30.09.2023 on Bipartite talks with IBA, Negotiating Committee Meeting – Round 3
- 39 dated 03rd October, 2023:** Circular on 39th foundation day of AIBOC
- 40 dated 07th October, 2023:** Text of UFBU Circular No. 2023/15 dated 07.10.23 on Approval of 100% DA for pre-November 2002 Pensioners by Government as per the MoU signed by UFBU with IBA on 28.07.2023, w.e.f. 01.10.2023.

## JUDICIAL

**[2022 (172) FLR 606]  
(ALLAHABAD HIGH COURT-LUCKNOW BENCH)  
RAJNISH KUMAR , J.**

**Service Single No. 15591 of 2019  
December 24, 2021**

**Between**

**ANIL KUMAR PURI**

**and**

**DISTRICT CO-OPERATIVE BANK LTD., SITAPUR through SECY.-CUM-  
C.E.O.and another**

*Payment of Gratuity Act 1972-Section 4 (6)-U.P. Co-operative Societies Act 1965-Section 70-U.P. Co-operative Societies Employees' Service Regulations, 1975-Regulation 95-Payment of gratuity-Contention of respondent was that gratuity amount of petitioner had been adjusted towards the loan amounts given by the petitioner to eight persons which not been recovered and those had become non-performing assets (NPA)-Hence present writ petition-Resolution was passed after the retirement of the petitioner for conducting an inquiry however, order impugned was passed without conducting any inquiry-Held, nothing had been brought before the Court to show any provision of law for withholding, forfeiting or adjustment of amount of gratuity towards NPA loan accounts-Gratuity amount could not be adjusted towards NPA loan accounts merely on the basis of a resolution-Impugned resolution set aside-Respondents directed to release the gratuity amount- Writ petition allowed.[ Paras 15 to 22]*

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

## JUDGMENT

**RAJNISH KUMAR, J.-** Heard, Shri Sudeep Seth, learned Senior Advocate assisted by Shri Sridhar Awasthi, learned counsel for the petitioner and Shri A.R. Khan, learned Counsel for the respondents.

2. The writ petition under **Article 226** of the Constitution of India has been filed challenging the resolution No.43 passed by opposite party No.2/ Committee of Management, District Co-operative Bank Limited, Sitapur in its meeting dated 07.10.2013. The further prayer has been made for commanding the opposite parties to release and pay the retiral benefits of Gratuity amounting to ₹ 6,17,905/- alongwith accrued interest thereon w.e.f. 01.07.2013 till the date of payment at the rate of 18% per annum to the petitioner.

3. The brief facts, for adjudication of the case, are that the petitioner retired on 30.06.2013 on attaining the age of superannuation from the services of respondent No.1/District Co-operative Bank Limited, Sitapur. The petitioner was informed about his retirement on 30.06.2013 by means of an order dated 22.06.2013 and his relieving on the said date as the charge was to be handed over to one Shri Ashish Shukla, who had to assume the charge. The petitioner received all the retiral benefits except the amount of Gratuity after his retirement on 30.06.2013. The petitioner made a representation dated 29.10.2013 and reminder dated 12.06.2014 to the opposite party No.1 for payment of his Gratuity. Thereafter he made a representation on 19.12.2014 to the opposite party No.2 for payment of Gratuity. On the representation dated 19.12.2014 of the petitioner the Chairman of the Bank made an endorsement to the Secretary/Chief Executive Officer of the Bank to make payment of Gratuity forthwith. However the Gratuity was not paid to the petitioner.

4. The petitioner approached to the Regional Labour Commissioner, who on an objection raised by the opposite party No.1 regarding jurisdiction of the Regional Labour Commissioner (Central), Lucknow, closed the case by means of the order dated

30.09.2015 and granted liberty to the petitioner to raise his grievance before the appropriate forum at State of U.P. Thereafter the petitioner approached the Assistant Labour Commissioner, Lucknow under the **Payment of Gratuity Act 1972 vide** P.G. Case No.124 of 2015. He disposed of the case by means of order dated 16.08.2016 on the ground that he has no jurisdiction. The petitioner thereafter approached to the Registrar, Co-operative Societies, U.P., Lucknow by means of the application dated 23.12.2016, who by means of the order dated 04.01.2017 directed to the Secretary/Chief Executive Officer to take necessary action for immediate payment of the amount of Gratuity of the petitioner. The response thereof was sent to the opposite party No.1 on 10.02.2017 informing that the post retiral benefits i.e. Provident Fund, Group Insurance and Leave Encashment have been paid to the petitioner on various dates. It had further been informed that the amount of Gratuity of ₹ 6,17,905/- has been received from the Insurance Company but since the loan amount disbursed by the petitioner had not been recovered from the borrowers and the petitioner had not made any effort to recover the loan amount and the said accounts have become non performing assets (NPA) as such under the provisions of **Payment of Gratuity Act 1972** the amount of Gratuity had been adjusted towards the NPA loan accounts of 8 borrowers. It was also informed that in case borrowers deposit the loan amount, the said amount would be paid/ released to the petitioner. A certificate dated 24.04.2015 had been issued by the Mahmoodabad Branch of the Bank with respect to the three loan accounts in which the amount had been deposited from time to time.

5. The petitioner again approached to the Additional Commissioner and Additional Registrar (Banking), Co-operative Societies, U.P., Lucknow for payment of amount of Gratuity by means of representation dated 04.08.2018. In response thereof it was informed to the petitioner by means of letter dated 13.02.2019

THE FOOL WHO KNOWS HE IS A FOOL IS MUCH WISER THAN THE FOOL WHO THINKS HE IS WISE



that the amount of Gratuity had been adjusted against the NPA loan accounts of the defaulter borrowers and there being a provision to settle the dispute under Section 70 of the U.P. Co-operative Societies Act 1965 and Chapter 18 of Rules 1968, therefore he may institute an Arbitration Case. Therefore the petitioner had approached this Court by means of writ petition Service Single No.14287 of 2019, but he was not having the resolution dated 07.10.2013, therefore he got the writ petition dismissed as withdrawn with liberty to file a fresh. Thereafter filed the present writ petition challenging the resolution dated 07.10.2013 passed by the opposite party No.2.

6. I have considered the submissions of learned Counsel for the parties and perused the records.

7. An objection was raised by learned Counsel for the respondents that the petitioner has an alternative and statutory remedy of Arbitration under Section 70 of the U.P. Co-operative Societies Act 1965 and Chapter 18 of Rules 1968, therefore, the writ petition is not maintainable and liable to be dismissed on this ground. Learned counsel for the petitioner had submitted that the amount of gratuity of petitioner has been adjusted towards NPA loan accounts without jurisdiction or authority of law. The remedy provided under **Section 70** is also not efficacious remedy and the petitioner will be required to deposit 1% of the fee amount for raising his grievance in Arbitration and the petitioner is already on the verge of starvation and famine as pension is not admissible to him, therefore the petitioner has approached to this Court by means of the present writ petition and he may not be relegated to alternative remedy and writ petition may be decided on merit.

8. It appears that this plea was not raised when the writ petition had come up for hearing for the first time on 29.05.2019 and the time for counter affidavit was sought and granted by this court. This Court had also directed to list the case in the category of senior citizen as the petitioner is a senior citizen. The petitioner had retired after attaining the age of superannuation on 30.06.2013.

The various correspondences and proceedings were undertaken by the petitioner since his retirement as disclosed above. But it appears that the respondents had not taken this plea. The counter and rejoinder affidavits have been exchanged. This Court also finds that purely question of law is involved in the present writ petition as to whether the amount of Gratuity can be adjusted towards NPA loan accounts after retirement or not without any authority of law. That too without inquiry and proved misconduct of an employee. Normally the writ petition should not be entertained if there is an alternative remedy but there is no bare also. Therefore in the facts and circumstances of the case, this Court feels it appropriate to decide the case on merit instead of relegating it to the alternative remedy.

9. The Hon'ble Supreme Court in the case of ***Whirlpool Corporation v. Registrar of Trade Marks***, has held that in an appropriate case inspite of availability of alternative remedy, High Court may still exercise its jurisdiction in at least three contingencies i.e. where the writ petition seeks enforcement of any of the fundamental rights or where there has been a violation of principles of natural justice or where the orders or proceedings are wholly without jurisdiction or vires of an Act is challenged. The same view has been taken by the Hon'ble Supreme Court in the case of ***Radha Krishna Industries v. State of Himachal Pradesh and others***, and it has been held that the rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

10. The sole issue which falls for considering in this writ petition is as to whether after retirement of an employee of the respondent-bank, his amount of Gratuity can be adjusted towards NPA loan accounts or not. The petitioner had retired after attaining the age of superannuation on 30.06.2013 from the service of the respondent No.1. Thereafter all the retiral dues except the Gratuity were paid to the petitioner. It appears that the Gratuity has not been paid to the petitioner on the basis of a resolution dated

EVERY HUMAN BEING IS THE AUTHOR OF HIS OWN HEALTH OR DISEASE

07.10.2013 of the respondent No.2 which reads as under:-

11. The aforesaid resolution indicates that the decision was taken, after retirement of the petitioner, for conducting an inquiry in regard to the disbursement of the loans by the petitioner during his posting. It was also decided that after inquiry the proceedings of recovery should be made. The further decision was taken that in future at least prior to two years of retirement of any employee, the assessment of the status of the loans disbursed during his period may be made. Therefore the decision was taken for conducting an inquiry in regard to the loans disbursed by the petitioner. Thereafter the proceedings of recovery were to be undertaken. However, in pursuance thereof the amount of Gratuity of the petitioner has been adjusted towards NPA loan accounts on account of alleged non-repayment of the loans without any enquiry and proof of misconduct of petitioner.

12. The services of the petitioner are governed by the U.P. Co-operative Societies Employees' Service Regulations, 1975 (hereinafter referred as Regulations 1975). **Section 95** provides for the Gratuity. Regulation 95 is extracted below:-

"95-Gratuity-(i) A co-operative society may by a resolution of its committee of management allow to its employees 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 years' 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 (1), a co-operative society may create Employees' Gratuity Fund."

13. In view of Regulation 95, an employee would be entitled to Gratuity equivalent to not more than 15 days' salary for every complete year of service, if he has attained the age of superannuation provided he has put in ten years of continuous service immediately preceding retirement. Admittedly the aforesaid Regulations are applicable and the **Payment of Gratuity Act 1972** is not applicable on the petitioner. The petitioner had rendered the requisite service mentioned in the aforesaid Regulation. He retired on attaining the age of superannuation on 60 years of age. Therefore, the petitioner is entitled for Gratuity in accordance with the aforesaid Regulations. However, the same has not been paid on the ground that certain loan accounts disbursed by the petitioner have become NPA. The petitioner has annexed a certificate dated 24.04.2015 of the concerned Branch of the Bank to indicate that the repayment was being made time to time in three loan accounts. However, as stated, after adjustment of the amount of Gratuity of the petitioner towards the said loan accounts no repayment is being made.

14. It has been stated by the respondent-bank in his letter dated 10.02.2017 to the Additional Commissioner and Additional Registrar (Banking), Co-operative Societies, U.P. Lucknow that in case the loan amount is deposited, the amount of Gratuity would be paid to the petitioner. This Court fails to understand as to when the amount has already been adjusted against the loan accounts as to how and why the same would be repaid by the defaulters. Nothing has been brought before this Court to show that any inquiry was made in pursuance of the resolution dated 07.10.2013 in regard to the loan accounts and anything was found against the petitioner. However, it appears that no effort has also been made in accordance with law for recovery of the loan amounts in regard to the loans in question.

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

15. It is settled that the Gratuity and pension are not bounties and an employee gets these benefits by his long continuous fulfilled unblemished service as such it is hard earned benefit of an employee and is in the nature of property. The right of property cannot be taken away without due process of law as per provisions of **Article 300-A** of the Constitution of India. Nothing has been brought before this Court to show any provision of law for withholding, forfeiting or adjustment of amount of gratuity towards NPA loan accounts. That too without any proof of misconduct or loss by the petitioner during his period of service. Therefore the same could not have been adjusted towards NPA loan accounts or withheld/forfeited merely on the basis of a resolution of the respondent No.2 passed against the petitioner or any executive instructions.

16. The Hon'ble Supreme Court considered the issue in the case of **State of Jharkhand and others v. Jitendra Kumar Srivastava and another**, Civil Appeal No.6770 of 2013 and held as under in paragraphs 14 and 15 by means of judgment and order dated 14th August, 2013:

"14. **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 provisions and under the umbrage of administrative instruction cannot be countenanced.

15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as "law" within the meaning of 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."

17. A Coordinate Bench of this Court in the case of **Amod Prasad Rai v. State of U.P. and another**, in regard to a case covered under the payment of **Gratuity Act, 1972** held that withholding the Gratuity is not permissible under any circumstance other than those enumerated in **section 4(6)** of the Act and right to gratuity is a statutory right. **Section 4(6)** of the said Act provides that the gratuity of an employee, can be forfeited only on account of termination for any act, willful omission or negligence causing any damage or loss or destruction of property belonging to the employer, termination for his riotous or disorderly conduct or any other act of violence on his part or offence involving moral turpitude, provided that such offence is committed by him in the course of his employment. The respondents have failed to show even any such ground for withholding or forfeiting the Gratuity of the petitioner against the petitioner.

18. In the case of **Baroda Uttar Pradesh Gramin Bank v. Union of India and others**, considering the issue as to whether the employers are entitled to recover a sum of 5 lakhs, ordered to be realized from the terminal benefits of the employee in enforcement of the punishment order made in disciplinary proceedings, by deducting it from gratuity payable to the employee? The Coordinate Bench held that the gratuity cannot be forfeited without any power and also held that

DO NOT DWELL ON THE PAST OR FUTURE. CONCENTRATE ON THE PRESENT MOMENT

**COMMON BOND ENGLISH MONTHLY-R.N.I.NO :36648/82 - TOTAL NO. OF PAGES 12 NOVEMBER -2023**

**REGN. NO. KRNA/BGE - 1122/2023-2025 PUBLISHED ON 25-10-2023**

**POSTED AT BANGALURU PSO, MYSORE ROAD, BANGALURU - 560 026 / ON 2ND OF EVERY MONTH**

**LICENCED TO POST WITHOUT PRE-PAYMENT-LICENCE NO. PMG BG/WPP 330/2023-2025**

what is not attachable in enforcement of a decree of any Court, civil, revenue or criminal, cannot be made available to the employer to recover his dues, howsoever, lawfully adjudged. Thus gave answer to the aforesaid question in negative.

19. Learned Counsel for the respondents has relied on *Remington Rand of India Ltd. v. The Workmen; The Management of Tournamulla Estate v. Workmen; Secretary, O.N.G.C. Ltd. and another v. V.U. Warriar and M/S. Steel Authority of India Ltd. v. Raghendra Singh and others* decided on 15th December 2020, by the Supreme Court in Special Leave to Appeal (C) No.(s) 11025 of 2020.

20. These all cases relied by learned Counsel for the respondents are not applicable on the facts and circumstances of the present case because in the said cases the forfeiture of gratuity has been upheld on account of misconduct resulting in damage of the property of the employer, whereas in the present case nothing has been proved against the petitioner, even the enquiry as proposed in the impugned resolution appears to

have not been done to find out as to whether the loans were wrongly and illegally disbursed by the petitioner to the ineligible persons. It appears that no effort has also been made by the respondents to recover the amount after retirement of the petitioner.

21. In view of above, this Court is of the considered view that the amount of gratuity of the petitioner has wrongly and illegally been forfeited and adjusted towards the NPA Loan Accounts without authority of law. Therefore the writ petition is liable to be allowed.

22. The writ petition is allowed. The impugned resolution dated 07.10.2013 is hereby quashed so far as it relates to the petitioner. The respondents are directed to release and pay the amount of Gratuity of ₹ 6,17,905/- to the petitioner alongwith interest @ 8% per annum w.e.f. the date of retirement of petitioner till the date of payment within a period of six weeks from the date of production of a certified copy of this order. No order as to costs.

***Petition Allowed.***

..Subscribe.....Establish....."Common Bond"

**An Official Publication Of AIBOC**

EDITORIAL BOARD

**Editor: COMRADE Rupam Roy**

**MEMBER: COMRADE P M BALACHANDRA**

**RATES OF SUBSCRIPTION: ANNUAL: ₹ 30/-**

**Drafts Should be Drawn**

**IN FAVOUR OF AIBOC AND MAILED TO**

**ALL INDIA BANK OFFICERS' CONFEDERATION**

**C/O STATE BANK OF INDIA OFFICERS' ASSOCIATION**

**(North Eastern Circle)**

C/o State Bank of India, Local Head Office,  
Dispur, Guwahati, Assam – 781006 ☎ : 9957563825

**E-mail: aiboc.sectt@gmail.com**

**Web site: http://www.aiboc.org**

**REGISTERED NEWS PAPER**

**TO**

**LICENSED TO POST  
WITHOUT  
PREPAYMENT**

**If Undelivered Please Return To**

**The All India Bank Officers' Confederation**

**SBI Buildings, St.Mark's Road, Bangaluru - 560 001.**

Printed & Published/Edited by Shri Rupam Roy on behalf of AIBOC, at State Bank Building, St.Mark's Road Bangaluru-560 001.  
Printed by Smt. Nithya Lakshmi, at L. V. Press 3916, 7th Cross, 4th Main, Gayathri Nagar, Bangaluru - 560 021

**Common Bond, November -2023**

**12**