



ALL INDIA BANK PENSIONERS' & RETIREES'

CONFEDERATION (A.I.B.P.A.R.C.)



C/O BANK OF INDIA OFFICERS' ASSOCIATION
(EASTERN INDIA BRANCHES)
BANK OF INDIA, KOLKATA MAIN BRANCH
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Circular No. 54/19

Date 12.08.2019

**(For circulation among members of the governing council of AIBPARC,
State Secretaries, Special Invitees and Advisors.)**

Dear Comrade,

**Sub : Removal of inconsistencies in calculation of gratuity
vis-à-vis the provisions of "Payment of Gratuity Act."**

The first meeting of the Governing Council of the calendar year 2019 held at New Delhi on 30th July, 2019 deliberated at length on different issues in regard to payment of gratuity. A decision was taken in the said meeting that the issue will be studied at length and suitable correspondence will be initiated with various authorities for removal of inconsistencies. In pursuance of the said decision, a letter under the joint signatures of President and General Secretary of AIBPARC has been sent to the Secretary, Department of Financial Services, Govt. of India, the Chief Executive, Indian Banks Association and the Secretary, Ministry of Labour and Employment, Govt. of India. A copy of the said letter is being reproduced hereunder for information of members.

With best wishes,

(SUPRITA SARKAR)
GENERAL SECRETARY

Quote :

**Removal of inconsistencies in calculation of Gratuity vis a vis the provisions of
'Payment of Gratuity Act'**

The Public Sector Banks have their own scheme for payment of Gratuity, the essential component of which are as under.

1. Gratuity is payable at the rate of one month salary for each completed year of service up to 30 years of service subject to a maximum of 15 months
2. Above 30 years of service, Gratuity is payable at the rate of one half of the month's salary for each completed year of service beyond 30 years.
3. The Salary includes Basic Pay, Stagnation Increment, Officiating Allowance, Increment component of Fixed Permanent Allowance (FPA) & Professional Qualification Allowance (PQA)
4. The formula for computation of Gratuity is -

“Salary x 15 days x Number of Years Service / 30 days”

The 'Payment of Gratuity Act' provides following essential component and methodology for computation of Gratuity:

1. Gratuity is payable at the rate of one month salary for each completed year of service up to 30 years of service subject to a maximum of 15 months.

2. Above 30 years of service, Gratuity is payable at the rate of one half of the month's salary for each completed year of service beyond 30 years.

3. The Salary includes Basic Pay, Stagnation Increment, Officiating Allowance, Increment component of Fixed Permanent Allowance (FPA), Professional Qualification Allowance (PQA) & Dearness Allowance.

4. The formula for computation of Gratuity is -

“Salary x 15 days x Number of Years Service / 26 days”

Section 4(5) of The Payment of Gratuity Act provides that nothing in the section shall affect the right of an employee to receive better terms of Gratuity under any award or agreement or contract with their employer. This provision implies that the Gratuity in the Public sector Banks shall be calculated by using both the above mentioned methodologies and the better of the two shall be payable to the retiring employees.

It can be seen that the components 3 & 4 mentioned above in the Banks scheme are at variance and inconsistent with the essential components mentioned as per the Payment of Gratuity Act.

The Payment of Gratuity Act is a self-contained code and Section 14 of the Act overwrites other enactments and since the Act is passed in Parliament, it is superior to the inconsistent provisions in the Gratuity Schemes of Public Sector Banks.

Inconsistency with the provisions of The Payment of Gratuity Act apart, our demand for inclusion of Dearness Allowance as a component of 'Pay' for the purpose of computation of gratuity is also supported by the judgement of the Hon'ble High Court of Madhya Pradesh, which held in the case of All India Gramin Bank Pensioners' Organisation that 'emoluments', 'pay' & 'salary' would include 'Dearness Allowance for the purpose of computation of gratuity.

Similarly, our demand for reckoning of Special Allowance along with 'pay' for the purpose of computing gratuity is supported by the judgement of the Hon'ble Supreme Court which held in the case of Provident Fund Commissioner that any Special Allowance which is payable to all staff across the board And is not associated with discharge of any specific function and is also payable during the period when the employee is on leave, is to be treated as a component of pay for this purpose. As regards an industry level settlement to the contrary, a kind attention is invited to the judgement dated 13.02.2018 of the Hon'ble Supreme Court wherein it was held that any settlement which is against the basic spirit of the regulations/law is null and void. IBA has implemented this judgement in its member banks while correcting the discrepancy in the case of fixation of pension in the case popularly known as 1616 point vis a vis 1684 points.

In view of the foregoing facts and submissions, we request you to make necessary arrangements for removal of the abovementioned inconsistencies by advising the Public Sector Banks to modify their Gratuity Schemes by incorporating the following essential components:

a. Incorporate Dearness Allowance & Special Allowance carrying Dearness Allowance into the definition of 'Salary'.

b. Modify the formula for computation of Gratuity as it appears under the Payment of Gratuity Act.

“Salary x 15 days x Number of Years Service / 26 days”

Sir, You will appreciate that the requested modifications shall remove the inconsistencies in the Banks' Gratuity Scheme vis a vis the provisions of Payment of Gratuity Act while rendering justice to the Bank Employees and Officers who have been denied their legitimate dues by paying lesser amount of Gratuity hitherto.

Kindly do the needful and oblige.

Thanking you

Yours faithfully,

Sd/-
(K.V. ACHARYA)
PRESIDENT

Sd/-
(S. SARKAR)
GENERAL SECRETARY