

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF JULY, 2026

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT APPEAL NO.1070 OF 2023 (L-KSRTC)

BETWEEN:

H. T. KRISHNEGOWDA
S/O THIMMEGOWDA
AGED ABOUT 71 YEARS
NO.348
OMKARESHWARA LAYOUT
MULLUSOGE
KUSHALANAGARA
SOMWARPET
KODAGU DISTRICT-571 236

...APPELLANT

(BY SMT. PATRICIA GONSALVES, ADVOCATE)

AND:

1. THE ASST. LABOUR COMMISSIONER
AND APPELLATE AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT
MANGALORE DIVISION
MANGALORE-575 001
2. THE ASST. LABOUR COMMISSIONER
AND CONTROLLING AUTHORITY
UNDER THE PAYMENT OF GRATUITY ACT

Digitally
signed by
PAVITHRA
Location
High Court
of Karnataka

DAKSHINA KANNADA
SUB DIVISION-2
MANGALORE-575 001

3. KARNATAKA STATE ROAD
TRANSPORT CORPORATION
PUTTUR DIVISION
PUTTUR BY ITS DIVISIONAL CONTROLLER
REP. BY ITS CHIEF LAW OFFICER

...RESPONDENTS

(BY SRI. VIKAS ROJIPURA, AGA, FOR R1 AND R2;
SMT. H.R.RENUKA, ADV, FOR R3.)

THIS WRIT APPEAL IS FILED UNDER SECTION 4 OF THE
KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE
ORDER DATED 05.12.2022 IN W.P.NO.40714/2019 (L-KSRTC)
PASSED BY THE LEARNED SINGLE JUDGE OF THIS COURT.

THIS WRIT APPEAL HAVING BEEN HEARD AND RESERVED
FOR JUDGMENT ON 23.06.2026 AND COMING ON FOR
PRONOUNCEMENT OF JUDGMENT THIS DAY, **ANU SIVARAMAN
J.**, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MRS. JUSTICE ANU SIVARAMAN
and
HON'BLE MR. JUSTICE VENKATESH NAIK T

CAV JUDGMENT**(PER: HON'BLE MRS. JUSTICE ANU SIVARAMAN)**

This writ appeal is filed challenging the Order of the learned Single Judge dated 05.12.2022 passed in W.P.No.40714/2019 (L-KSRTC).

2. We have heard Smt. Patricia Gonsalves, learned counsel appearing for the appellant, Shri. Vikas Rojipura learned Additional Government Advocate appearing for respondents No.1 and 2 and Smt. H.R Renuka, learned counsel appearing for respondent No.3.

3. The appellant submitted that he joined respondent No. 3 - Karnataka State Road Transport Corporation (hereinafter referred to as 'KSRTC') as a Driver on 01.05.1985 and superannuated on 31.03.2012 after completing 26 years and 11 months of continuous service. Pursuant to the retrospective revision of pay with effect from 01.01.2012, his last drawn Basic Pay was Rs.13,780/- and the Dearness Allowance was Rs.10,576/- and the appellant was entitled to receive a total gratuity of Rs.6,40,635/-.

4. The KSRTC paid gratuity of Rs.3,65,342/- (fifteen days' wages per year), computed under the Payment of Gratuity Act, 1972. The appellant then filed an application before the Controlling Authority claiming the difference in gratuity. The Controlling Authority by Order dated 22.03.2018 held that the appellant was entitled to gratuity of Rs.6,55,583/- and directed payment of the balance of Rs.2,90,241/- with interest at 10% per annum from 18.12.2014. Aggrieved by the said Order, the KSRTC filed an appeal before the Appellate Authority. The Appellate Authority by Order dated 13.03.2019, dismissed the appeal and upheld the Order of the Controlling Authority.

5. Thereafter, the KSRTC filed W.P.No.40714/2019 challenging the Order. The learned Single Judge by Order dated 05.12.2022, allowed the writ petition, holding gratuity payable on Basic Pay alone ($\text{Rs.13,780} \times 26 \text{ years } 11 \text{ months} = \text{Rs.3,70,911}$), leaving a balance of only Rs.5,569/, with interest from 18.12.2014 to the date of deposit (11.05.2018). On that basis the Labour Department

issued an Office Order dated 11.04.2023 to recover the excess paid.

6. The learned counsel appearing for the appellant contended that the learned Single Judge committed an error by treating only Basic Pay (Rs.13,780) as 'wages' and excluding Dearness Allowance. It is contended that this violates the definition of 'wages' in Section 2(s) of the Payment of Gratuity Act, 1972, which expressly includes Dearness Allowance, so the Controlling Authority was correct in calculating Basic Pay plus Dearness Allowance (Rs.13,780 + Rs.10,576 = Rs.24,356) as the gratuity base.

7. It is further contended that the Order of the learned Single Judge also violates the Settlement dated 17.07.1989 between the KSRTC and the Union. Clause 5 of which provides that merged Dearness Allowance is reckoned for gratuity and the KSRTC's own circulars, issued pursuant to Government of Karnataka orders, directing that the prescribed percentage of Dearness Allowance be merged into Basic Pay for computing gratuity.

8. It is further contended that the impugned Order is said to be contrary to another Order of the learned Single Judge dated 05.12.2019 passed in W.P.No.40714/2019 (L-KSRTC), wherein, it was held that Dearness Allowance forms part of the gratuity base. Further, the KSRTC being a 'State' under Article 12 of the Constitution of India, acted arbitrarily, thereby violating Articles 14 and 16 of the Constitution of India.

9. The learned counsel appearing for the appellant has placed reliance on the following decisions:-

- ***State of Punjab v. Rafiq Masih (White Washer)*** reported in ***AIR 2015 SC (Civil) 939***;
- ***R. Krishna Reddy v. The Management of KSRTC and Others*** by Order dated **13.10.2003** passed in ***W.P.No.31735/1998 (LK)***;
- ***The Management of KSRTC v. R. Krishna Reddy and Others*** by Order dated **09.09.2005** passed in ***W.A.No.7954/2003***; and
- ***The Management of KSRTC, the Chief Law Officer v. R. Krishna Reddy*** by judgment dated **01.11.2006** passed in ***Appeal (civil) 4637/2006***.

10. The learned counsel appearing for the respondent - KSRTC contended that the Controlling Authority determined the gratuity payable to the appellant by taking into consideration both the basic pay and the dearness allowance, and Rs.24,316/- was the basic pay to determine gratuity. It is further contended that Rs.24,316/- was not the last drawn basic pay of the appellant, which was in fact Rs.13,780/-. It is further contended that the inclusion of dearness allowance is contrary to the KSRTC Gratuity Regulations, and that the computation as per the said Regulations ought to be one month's basic pay multiplied by the number of years of service.

11. It is further contended that the appellant, at the time of his superannuation, was drawing a basic pay of Rs.12,230/- and dearness allowance of Rs.8,799/- and that he ought to have been paid a gratuity of Rs.5,59,683/-. It is contended that the authorities, while determining the gratuity, erroneously took into consideration the dearness allowance of Rs.10,576/-, which is incorrect, in view of the method of calculation to be applied. It is further contended

that the merger of a portion of the dearness allowance with the basic pay, as per the Government Order, is available only to an employee on the rolls as on 01.04.2012, whereas, the appellant had retired from service on 31.03.2012.

12. It is further contended that while the employee would be entitled to receive better terms of gratuity than what is provided under Section 4(2) of the Payment of Gratuity Act, under agreement or contract with the employer in terms of Section 4(5) of the Payment of Gratuity Act, that would not make the employee eligible to claim the benefit of the Act to calculate 'wages' as defined under the Act and then claim Gratuity under the Settlement which offers better terms.

13. In the instant case, the pleadings placed on record by the appellant would show that the last drawn basic pay was taken as Rs.13,780/- and calculating the total services as 27 years and the entire pay as provided in the Gratuity Regulations of the KSRTC, the gratuity payable was assessed. However, the contention of the appellant is that the amount due under the Government Order dated

21.04.2012 which became applicable as on 01.04.2012, is to be paid, that is, Dearness Allowance has to be merged with the pay and emoluments have to be calculated. However, we notice that the appellant retired from service on 31.03.2012. He would therefore not have been eligible for the benefits of the Government Order dated 21.04.2012, which clearly provides the date of effect of the revised scale of pay from 01.04.2012. The Payment of Gratuity Act defines "Wages" to include all emoluments earned by an employee while on duty. However, the amount of gratuity to be paid would be at the rate of 15 days wages for every completed year of service in excess of six months. Section 4(3) of the Payment of Gratuity Act also limits the gratuity payable, such amount as may be notified by the Central Government from time to time. The amount payable under the Regulations was the basic pay drawn multiplied by the number of years of service. This calculation is admittedly a better term of gratuity than what is provided under Section 4(2) of the Payment of Gratuity Act. Even if the appellants wages are calculated as Rs.24,316/-, as contended, he

would be entitled only to count fifteen days wages for calculation of gratuity which would be lesser than the amount that has been calculated as of now.

14. Further, the contention of the appellant that gratuity has to be paid taking note of the wages as defined under the Payment of Gratuity Act, also cannot be accepted since the appellant had been granted a better term of gratuity than what was provided under Section 4(2) of the Payment of Gratuity Act.

15. Having accepted the better terms as provided under Section 5 of the Payment of Gratuity Act, the appellant cannot be permitted to seek even higher benefits on the basis of the definition of wages under the Payment of Gratuity Act. Since the gratuity paid to the appellant was admittedly higher than what he would have been entitled to under the provisions of Payment of Gratuity Act, we are of the opinion that the said contention cannot be accepted under any circumstances. We therefore find no error in the order passed by the learned Single Judge.

16. The appeal therefore fails, the same is accordingly ***dismissed***.

All pending interlocutory applications shall stand *disposed of*.

**Sd/-
(ANU SIVARAMAN)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

cp*