IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 10TH DAY OF SEPTEMBER 2015/19TH BHADRA, 1937

OP.No. 8424 of 2002 (C)

PETITIONER:

JOHN PALLIPPURATHU, S/O. JOSEPH,
ANUGRAHAM, ODENTHODU, MANATHANA P.O.
KANNUR DIST.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. THE MANAGING DIRECTOR,
   STATE FARMS CORPORATIONS OF INDIA LTD., FARM BHAVAN
   14-15, NEHRU PLACE, NEW DELHI-19.

2. THE DIRECTOR, CENTRAL STATE FARM,
   ARALAM, ARALAM FARM P.O., KANNUR DISTRICT.

3. THE DIRECTOR,CENTRAL STATE FARM,JETSAR,
   JETSAR FARM P.O., SREE GANGA NAGAR DISTRICT
   RAJASTHAN.

4. UNION OF INDIA REPRESENTED BY THE
   SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF
   AGRICULTURE, NEW DELHI.

R1,2 &4 BY ADV. SRI.P.S.SREEDHARAN PILLAI, SCGSC
R2 BY ADV. SRI.U.K.RAMAKRISHNAN (SR.)
R2 BY ADV. SRI.E.K.MADHAVAN
R2 BY ADV. SRI.V.KRISHNA MENON
R1 BY ADV. SMT.P.VIJAYAMMA
R, BY ADV. SMT.UMA GOPINATH
R, BY ADV. SRI.U.K.DEVIDAS
R4 BY ADV. SRI.V.E.ABDUL GAFOOR, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 10-09-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP.No. 8424 of 2002 (C)

APPENDIX

PETITIONER'S EXHIBITS

P1	**:**	**TRUE COPY OF EPF STATEMENT IN RESPECT OF PETITOINER**
P2	**:**	**TRUE COPY OF THE REPRESENTATION DT. 29.3.2001 SUBMITTED BEFORE THE 3RD RESPONDENT**
P3	**:**	**TRUE COPY OF REPRESENTATION DT.1.6.2001 SUBMITTED BEFORE THE 1ST RESPONDENT**
P4	**:**	**TRUE COPY OF REPRESENTATION DT.8.3.2002 SUBMITTED BEFORE THE 1ST RESPONDENT**
P5	**:**	**TRUE COPY OF ORDER NO.SFCI/21/53/79-GA DATED 23.1.1980**
P6	**:**	**TRUE COPY OF CIRCULAR NO.SFCI/6-4/88/GE/1764 DATED 13.3.2000 ISSUED BY STATE FARM CORPORATION.**
P7	**:**	**TRUE COPY OF OFFICE ORDER NO.CSF/CAN/1/54/93-ADMIT DATED 31.3.2001 ISSUED BY THE 1ST RESPONDENT**
P8	**:**	**TRUE COPY OF LETTER DATED 3.6.2002 ISSUED BY THE ACCOUNTS OFFICER**

RESPONDENT'S EXHIBITS

R1(A)	**:**	**TRUE COPY OF THE LETTER NO.CSF/JTS/2-29(79)/315DATED 14/15-MAY 2002, SENT BY THE 3RD RESPONDENT TO THE 1ST RESPONDENT**
R1(B)	**:**	**TRUE COPY OF THE MINUTES OF THE CONCILIATION MEETING HELD ON 8.4.2002**
R1(C)	**:**	**TRUE COPY OF THE OFFICE MEMORANDUM NO.2(32)/97-DPE (WC) GL-XXXV DAED 8.12.2000, ISSUED BY THE GOVERNMENT OF INDIA**
R1(D)	**:**	**TRUE COPY OF THE LETTER NO.SFCI/6-4/88-GA DATED 8.4.2002 ISSUED BY THE DEPUTY CHIEF ADMINISTRATIVE OFFICER OF THE 1ST RESPONDENT**

//TRUE COPY//

P.A. TO JUDGE

JJJ

K. VINOD CHANDRAN, J.

O.P. No. 8424 of 2002 (C)

Dated this the 10th day of September, 2015

JUDGMENT

The petitioner has filed the above original petition raising a number of monetary claims which he asserts was due to him while he was in service and on his retirement.

2. On a reading of the reliefs, this Court is of the opinion that none of the monetary claims could be considered by this Court under Article 226 of the Constitution of India. Even the claim for gratuity had to be agitated before the authorities under the Payment of Gratuity Act, 1972. However, only in the circumstances coming out in the above case and the fact that the above writ petition was admitted and kept pending all these years, this Court would exercise the extra ordinary jurisdiction on the admitted facts before this Court.

3. The petitioner's claim for full gratuity was declined by the official respondents on the premise that he was not entitled to notice pay. For adjudication of the aforesaid dispute, the brief facts to be noticed are that the petitioner retired from the respondent Corporation after 20 years of service under a Voluntary Retirement Scheme (V.R.S.), which is produced as Ext.P6. Ext.P6 filed along with the application for amendment, lists out the benefits under the V.R.S. as herein below:

> "(i) The balance in his Provident Fund account payable as per the EPF regulation.
>
> (ii) Cash equivalent of accumulated earned leave as per the rules of the State Farms Corporation of India.
>
> (iii) Gratuity as per gratuity scheme applicable to the State Farms Corporation of India employees.
>
> (iv) One month's/three months' notice pay (as per the conditions of service applicable to him)"

4. The petitioner admittedly filed an application on 29.4.2000 for V.R.S., immediately after the introduction of the Scheme in the year 2000. However, the same was processed and accepted only by Ext.P7, dated 31.3.2001. The petitioner was given an amount of Rs.5,59,157/- and was relieved from duty on 31.3.2001 itself. Subsequently, on 3.6.2002, when gratuity was paid, Rs.50,550/- was withheld towards the notice pay granted as per Ext.P7. So much is evident at Ext.P8. The above facts are admitted by both sides.

5. The contention of the respondent is that as per the Government of India directions produced at Annexure R1(c), no notice pay is applicable if an employee has been continued after the application, for the notice period and the same would be eligible only if the employee is relieved on the date of application itself. Hence, since the notice pay

was paid as per Ext.P7, the same was an erroneous payment and was adjusted from the gratuity amount, is the contention raised by the learned Standing Counsel. Essentially, it is to be noticed that the scheme was dated 13.3.2000 and did not have any such condition with respect to notice pay. Ext.R1(c) is a clarification issued by the Government of India on 8.12.2000, long after the introduction of the scheme.

6. Though, the learned counsel for the respondent submits that Ext.R1(c) was issued before the petitioner was relieved from service, it has to be noticed that the petitioner was not communicated of the same nor was he given an option to withdraw from the application, when such a condition was newly brought in; on the clarification issued by the Government of India. The learned counsel relies on Ext.R1(d) as a communication published in the notice board, but the same is dated 8.4.2002, long after the retirement of the petitioner.

7. In such circumstance, the petitioner's application had to be considered in accordance with Ext.P6 scheme. Ext.P6 scheme, as is extracted herein above, clearly specifies the notice pay to be paid in accordance with the terms and conditions of service of an employee. The petitioner had been paid the notice pay and later the same was adjusted from the gratuity payable. It is to be noticed that no such adjustments could have been made from the gratuity payable under the Payment of Gratuity Act, 1972, since the same is not liable for any attachment or recovery.

8. Further, though the application was filed earlier, the same was kept pending and allowed much later. When the voluntary retirement was allowed, the petitioner was sent out of service on the date of the order itself. The respondent could have either retained him for the notice period or could have relieved him on the same day, only

with payment of pay-in-lieu of notice. Hence, the adjustment of Rs.50,550/- from the gratuity payable to the petitioner is found to be bad.

9. The learned counsel for the petitioner relies on **H. Gangahanume Gowda v. Karnataka Agro Industries Corpn. Ltd. - 2003 KHC 882**, **State Farms Corporation of India Ltd. v. P.D. Mathai and Others - 2008 (1) KHC 403** and **Union of India and Others v. P. Aboobacker and Another - 2011 KHC 672** to contend that petitioner is entitled to interest from the date on which the gratuity was due. True, as per the Payment of Gratuity Act, interest is due, but, however, only if the claimant has moved an application under the Payment of Gratuity Act. Here, the petitioner sought to circumvent that remedy and came before this Court under Article 226 of the Constitution of India. This Court, in fact, invoked the jurisdiction only in the special circumstances pleaded, which is supported by

the decision in **P.D. Mathai** (supra), wherein it was held that no deduction is permitted to be made by the employer from the gratuity, except as specifically provided for under the Payment of Gratuity Act. In the special circumstances in which the extraordinary jurisdiction is invoked, this Court is of the opinion that there can be no interest granted, if the respondent pays the amount within one month as directed hereunder.

10. It is also to be noticed that the above writ petition was pending before this Court from 2002 and the preliminary objection raised is; of there being an alternative remedy. The long delay in disposing of the writ petition should not prejudice either the petitioner or the respondent. Hence, while ensuring immediate payment to the petitioner any delay, hereafter, has to be compensated with interest from the due date. If the amount directed is not paid within one month, definitely interest would accrue from the date of the adjustment made.

11. There shall be a direction that the amounts shall be paid within a period of one month from the date of receipt of the certified copy of this judgment. If the payment is not made within one month, then, necessarily the petitioner would be entitled to statutory interest at the rates prescribed under the Payment of Gratuity Act, 1972. In the circumstance of the petitioner having submitted that the Tax Deduction at Source was made, for income tax purposes, for the recovered amount at the time of Ext.P7 itself, no tax shall be deducted from the amount payable. However, if interest liability is accrued, definitely tax due thereon alone shall be deducted.

Writ petition allowed. No costs.

Sd/-
K.VINOD CHANDRAN,
JUDGE

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