

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 10TH DAY OF FEBRUARY 2015/21ST MAGHA, 1936

O.P.(LC).No.2450 of 2012 (O)

[AGAINST ORDER DATED 10.04.2012 IN GRATUITY APPEAL
G.A.NO.39 (10) 2011-B1 OF THE APPELLATE AUTHORITY AND
REGIONAL LABOUR COMMISSIONER (CENTRAL) COCHIN].

PETITIONER(S):-

THE SR. DIVISIONAL PERSONNEL OFFICER
SOUTHERN RAILWAY, SALEM.

BY STANDING COUNSEL SRI.JAMES KURIAN.

RESPONDENT(S):-

M.MURUGAN
SARAVANABHAVAN, KALPATHI P.O., PALAKKAD-3.

BY ADV. SRI.T.A.RAJAN.

THIS OP (LABOUR COURT) HAVING BEEN FINALLY HEARD ON
10-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) EXHIBITS:-

- EXT.P1 : COPY OF GRATUITY APPLICATION GA NO.18/2010
ALONG WITH ANNEXURE FILED BY APPLICANT.
- EXT.P2 : COPY OF WRITTEN OBJECTION IN GA 18/2010 FILED BY RAILWAY.
- EXT.P3 : COPY OF ARGUMENT NOTES IN GA 18/2010 FILED BY RAILWAY.
- EXT.P4 : COPY OF ORDER DTD.31.1.2011 OF ASSISTANT LABOUR
COMMISSIONER(CENTRAL), ERNAKULAM IN GA 18/2010.
- EXT.P5 : COPY OF GRATUITY APPEAL GA 39(10)/2011 FILED BY RAILWAY.
- EXT.P6 : COPY OF OBJECTION IN GA 39(10)/2011 FILED BY APPLICANT.
- EXT.P7 : COPY OF ARGUMENT NOTES IN GA 39(10)/2011 FILED BY RAILWAY.
- EXT.P8 : COPY OF ORDER DTD.10.4.2012 OF REGIONAL LABOUR
COMMISSIONER(CENTRAL) COCHIN IN GA 39(10)/2011.
- EXT.P9 : COPY OF RAILWAY BOARD CIRCULAR DTD.14.10.1980.
- EXT.P10: COPY OF RAILWAY BOARD CIRCULAR DTD.30.6.2000.

RESPONDENTS' EXHIBITS:-

- EXT.R1(a) TRUE COPY OF THE SERVICE CARD OF THE RESPONDENT.
- EXT.R1(b) TRUE COPY OF THE COMMON JUDGMENT DATED 10.09.2002 OF
THIS COURT IN O.P.NO.24781/2002.
- EXT.R1(c) TRUE COPY OF THE ARGUMENT NOTE DATED 14.01.2012 IN
GRATUITY APPEAL.
- EXT.R1(d) TRUE COPY OF THE FULL TEXT OF THE COMMON JUDGMENT
DATED 10.09.2012 IN O.P.NOS.15460/2000, 24781/2002 AND
25021/2002.

vkul/-

/ true copy /

K. Vinod Chandran, J.

O.P(LC) No.2450 of 2012-O

Dated this the 10th day of February, 2015

JUDGMENT

The petitioner herein, being the Southern Railway, is aggrieved by Exhibit P4 order of the Controlling Authority under the Payment of Gratuity Act, 1972, as affirmed in Exhibit P8 by the Appellate Authority under the enactment. The respondent's claim with respect to enhanced gratuity was allowed by the authority.

2. The respondent's claim was with respect to gratuity for the entire period he spent in the Railway service, from 1972 to 2009. The Railways resisted the prayer on the ground that the respondent had been a casual worker, prior to 01.01.1981 and he was granted a temporary status, in which he continued till 1983 when he was absorbed into regular service of the Railways. The respondent is said to have continued in the service of the Railways till 2009 when he attained superannuation. Gratuity was paid to him in accordance with the rules regulating the same, issued by the Railways, coming

to an amount of Rs.2,04,000/-. Admittedly the said gratuity was for the entire period of regular service between 1983 and 2009; and reckoning one-half entitlement between 01.01.1981 and 1983, i.e., between the period of achieving the temporary status and being absorbed into regular service. The respondent claimed that he has to be granted the entire gratuity right from 1972 till 2009 when he continued in the service of the Railways as an employee as per the benefits available under the Payment of Gratuity Act.

3. The Railways resisted the claim on the ground that the casual work claimed by the petitioner between 1972 and 1981 was not established. It was also contended by the Railways that, on absorption into regular service from the category of a temporary status worker, every such temporary workmen have to exercise an option. The first option is to the effect that the entire gratuity applicable as on the date of absorption would be paid to the temporary worker, reckoning his claim as on the date of absorption into regular status. The other option was that on agreeing to one-half entitlement to gratuity for the period continued as a temporary status worker, the

worker would be paid gratuity at the time of his superannuation from service reckoning only one-half the temporary status service for payment of gratuity. The respondent was considered under the latter, since he has not exercised an option, is the contention.

4. When there is a specific option to be exercised, it was the responsibility of the management to have communicated such option available, as per the Rules and obtained the same from the worker. Nothing is produced before the lower authorities to evidence such an option having been exercised by the respondent herein. In such circumstance, based on the rules, the Railways cannot restrict the gratuity for the temporary status period to one-half; of that which the worker would be entitled under the Payment of Gratuity Act.

5. As to the casual work period, the specific contention of the Railways was that there is nothing to evidence the same. The Railways in its objection, produced at Exhibit P3, specifically contended in paragraph 11 that every casual labourer would have a Casual Labour Service Card, which would reveal the period of such engagement. The Railways

failed to produce any documents before the Court, since admittedly twenty years had elapsed from the employment of the respondent as a casual labourer. Though no adverse inference could be drawn against the Railways; the respondent is seen to have produced Exhibit R1(a), the Casual Labour Service Card issued by the Railways before the Controlling Authority itself. Though the Controlling Authority has not referred to that document, the Appellate Authority has specifically noticed the Casual Labour Service Card produced. In such circumstance, especially noticing the fact that the respondent was continued as casual labourer continuously, the Controlling Authority and the Appellate Authority directed grant of gratuity for the entire period from 1972, when he was employed as casual labourer, to 2009 when he retired on superannuation.

6. The learned Standing Counsel for the petitioner, however, would point to Ground 'G' of the writ petition and contend that as per Rule 70 of the Pension Rules, the maximum death-cum-retirement gratuity [for brevity "DCRG"] payable is only 16½ times of the emoluments, even if the entire service is treated as regular service. The contention is raised on the

ground that there is a restriction in the Pension Rules that the DCRG would be limited to that computed at 16½ times of the emoluments.

7. The learned counsel appearing for the respondent, however, would contend that the said argument has already been considered by a Division Bench of this Court in O.P.Nos.15460 of 2000, 24781 of 2002 and 25021 of 2002, produced as Exhibit R1(d).

8. A reading of Exhibit R1(d) judgment would indicate that two questions were considered by the Division Bench on the basis of the specific contentions raised by the Railways. To decline the benefits of the Payment of Gratuity Act, to the petitioners therein, the Railways contended that on the temporary status employee being converted into regular employee, there is a cessation of employment and payment of gratuity, at that point, would be computed only on the salary last drawn by the employee as a temporary status worker. Further, it was also contended that there is a restriction as per the rules of the Railways from granting a benefit as available under the Payment of Gratuity Act.

9. The Division Bench found that there can be no cessation of employment of a temporary status worker, since he is absorbed into regular status on the basis of the continuance as a temporary status worker. The applicability of the benefits of the Payment of Gratuity Act, 1972 was found to be applicable even to a worker under the Railways, *de hors* the provisions in the Rules, since an exclusion to the benefits under the Payment of Gratuity Act was available only when the establishment/management provided better benefits than that available under the Payment of Gratuity Act. In such circumstance, this Court does not find any reason to interfere with the findings of the lower authorities based on available facts as revealed from the evidence adduced before them.

10. However, the question of delay has also been projected by the learned Standing Counsel for the petitioner. Admittedly a delay of 251 days was caused in approaching the authority under the Payment of Wages Act,. Though a limitation is prescribed under the Payment of Gratuity Act, the authority has the power to condone the delay, which has been exercised by the authority. However, it is to be noticed that the authority

has also mulcted interest at the rate of 10% from the date of retirement of the respondent. That, however, will have to be limited from the date of application before the Controlling Authority under the Payment of Gratuity Act. It is trite that in an industrial adjudication though delay has to be considered in a liberal manner, Court could definitely mould the relief in accordance with the facts.

Resultantly, with the modification that the interest applicable would be from the date of application before the Controlling Authority under the Payment of Gratuity Act, the writ petition is disposed of, upholding the impugned order, in all other respects. No costs.

Sd/-
K. Vinod Chandran,
Judge

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