

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

FRIDAY, THE 9TH DAY OF OCTOBER 2015/17TH ASWINA, 1937

RP.No. 633 of 2015 IN WA.1822/2010

AGAINST THE JUDGMENT IN WA 1822/2010 DATED 05-06-2015

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REVIEW PETITIONER/RESPONDENT :

K.P.VARUGHESE, AGED 64 YEARS
KALLARACKAL HOUSE, ERICADU, PUTHUPPALLY P.O.
KOTTAYAM-686 011.

BY ADV. SRI.GEORGE SEBASTIAN

RESPONDENT/APPELLANT :

LIFE INSURANCE CORPORATION OF INDIA
REPRESENTED BY THE BRANCH MANAGER (P & GS)
DIVISIONAL OFFICE, KOTTAYAM
THROUGH THE HANDS OF ITS MANAGER (LEGAL & HOUSING
PROPERTY FINANCE) SHRI. R.SURENDRAN, AGED 62 YEARS,
S/O. LATE RAMAN PILLAI, LIC OF INDIA
DIVISIONAL OFFICE, ERNAKULAM - 682 011.

BY SRI.VARGHESE C.KURIAKOSE, STANDING COUNSEL

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

APPENDIX

PETITIONER'S EXHIBITS :

ANNEXURE R1(C) : TRUE COPY OF THE AMENDED WRIT PETITION,
WP(C) No.27863/2009 WHICH WAS FILED AFTER THE
AMENDMENT WITHOUT THE EXHIBITS.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

Ashok Bhushan, C.J. & P.R.Ramachandra Menon, J.

R.P. No. 633 of 2015
IN
W.A. No. 1822 OF 2010

Dated this the 9th day of October, 2015

O R D E R

Ashok Bhushan, C.J.

Heard learned counsel for the petitioner as well as learned counsel appearing for the Life Insurance Corporation.

2. This Review Petition has been filed by the petitioner seeking review of the judgment dated 05.06.2015 in so far as W.A. No.1822 of 2010. Learned counsel for the respondent-Life Insurance Corporation of India contends that W.A. No.1822 of 2010 was filed by the Corporation against the judgment of learned Single Judge in W.P.(C) No. 27863 of 2009 which was filed by the writ petitioner praying for a direction to the respondent to make immediate payment of the amount mentioned in Ext.P1 rectified by Ext.P4. W.P.(C) No.27863 of 2009 was disposed of along with W.P.(C) No. 29137 of 2009 filed by the Life Insurance Corporation against the award of Ombudsman in favour of the writ petitioner-employee. The learned Single Judge allowed W.P.(C) No.27863 of 2009 filed by the petitioner by modifying the

award and directing payment of additional amount of Rs.1,72,796/-. The aforesaid direction was issued by learned Single Judge taking the view that the calculation of the amount payable to the petitioner as gratuity amount was not correct. The last portion of the judgment of learned Single Judge is as follows:

"Therefore, I am satisfied that 15 days' salary has to be calculated in accordance with above said explanation. The Insurance Ombudsman has taken the monthly salary of Sri. K.P. Varghese as Rs. 30,206/-, which is not disputed before me. Admittedly, he had 30 years of continuous service. Calculating the insurance amount payable on the basis of the said inputs, the gratuity payable as per the policy would be $[30206 \times 15 \times 30/26]$ Rs. 5,22,796.15. The upper limit of 20 months' salary prescribed under the policy would certainly be higher than that. Therefore, as per the master policy, Sri. K.P. Varghese is entitled to the amount of Rs. 5,22,796.15, as the insurance amount. It is declared so. Ext. P9 order in W.P(C) No. 29137/2009, which is the same as Ext. P4 in W.P(C) No. 27863/2009, would stand modified accordingly. The LIC of India is directed to pay the additional amount of Rs.1,72,796.15 to Sri. K.P. Varghese through the bank within one month from the date of receipt of a copy of this judgment. On the balance amount of Rs.1,72,796.15, the LIC shall pay 6% interest from 25-4-2007 when the LIC first made the payment of Rs. 3,50,000/- still date of payment."

3. Noticing the fact that in W.P.(C) No.27863 of 2009 the only prayer made by the petitioner was for a direction for implementation of the award as modified and no other reliefs were claimed, we allowed the appeal of the Corporation and set aside the judgment of learned Single Judge to that extent. In paragraph 23 while allowing the appeal of Corporation the basis of our judgment was recorded which was to the following effect:

"We are of the view that learned Single Judge committed error in enhancing the amount of award, whereas there was no prayer by the petitioner nor the award was challenged in the writ petition filed by the respondent, Sri.K.P. Varghese. Thus the order of learned Single Judge directing payment in excess of what has been awarded by Ombudsman is set aside and W.A. No.1822 of 2010 is partly allowed to the above extent."

4. The review petitioner has submitted that the writ petition filed by the petitioner, being W.P.(C) No.27863 of 2009, was subsequently amended and some more prayers were added. He has quoted the prayers in ground F which is to the following effect:

"i. To declare that the petitioner is entitled to get his gratuity calculated in terms of explanation to Section 4(2) of the Payment of Gratuity Act.

ii. To modify Ext.P4 ordering payment of gratuity to the petitioner by reckoning his 15 days salary as Rs.17,430/- instead of Rs.10.162/-.

iii. To direct the respondent to disburse to the petitioner the modified award within a time frame with the rate of interest mentioned in Ext.P4.

iv. To grant such other reliefs as this Hon'ble Court may deem just and proper."

5. Learned counsel for the review petitioner submits that the amended writ petition was not filed by the appellant in time nor could be brought into the notice of the Court. Hence W.A. No.1822 of 2010 was allowed on the ground that no such prayer was made by the writ petitioner and hence learned Single Judge has committed error in modifying the award.

6. Learned counsel for the Corporation is not opposing the grounds made in the Review Petition. But it is stated that after the award of Ombudsman, the consent letter dated 20.05.2009 was submitted by the petitioner, giving his acceptance to the award in full and final settlement, hence it is not open for him to file a writ petition challenging any part of the award.

7. We have considered the aforesaid submission. The consent given by the petitioner was noted in paragraph 22 of the judgment. It is clear that even after going by the consent letter, the payment was not made, which compelled the petitioner to file the writ petition. In the writ petition, apart from seeking enforcement of the award, the petitioner had also prayed for getting his gratuity calculation in terms of Section 4(2) of the Payment of Gratuity Act. As noted above, the writ petition was also filed by the Corporation challenging the award by the Ombudsman. When both writ petitions were being heard together, learned Single Judge has also considered the prayer made by the petitioner in W.P.(C) No. 27863 of 2009 which were added by amendment. We are of the view that merely because at one point of time the consent was made by the employee and that could not preclude the petitioner/employee from approaching the Court and making any additional prayers in the writ petition. When the writ petitioner claims that calculation should be in accordance with the provisions of the Act and the learned Single judge having gone into the aforesaid, we are of

the view that the discretion exercised by the learned Single Judge cannot be interfered by exercising the appellate jurisdiction. More so, as noted above, we have allowed the appeal filed by the Corporation under a misconception that there was no prayer for modification of the award. Now relevant prayers are before us and copies of amendment have been brought on record. We are of the view that the basis for allowing W.A. No.1822 of 2010 has become non-existent.

In the above view of the matter, we allow the Review Petition and dismiss W.A. No.1822 of 2010. Learned counsel for the Corporation prays that they may be allowed 2 months' time to make the payment as directed by learned Single Judge. Time as prayed for is granted to the Corporation.

**Ashok Bhushan,
Chief Justice.**

**P.R.Ramachandra Menon,
Judge.**