

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 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WA.No. 1822 of 2010 IN WP(C).27863/2009

AGAINST THE JUDGMENT IN WP(C) 27863/2009 DATED 27-07-2010

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APPELLANT/RESPONDENT IN THE WRIT PETITION :

LIFE INSURANCE CORPORATION OF INDIA
REP.BY THE BRANCH MANAGER(P&GS), DIVISIONAL OFFICE
KOTTAYAM, THROUGH THE HANDS OF ITS MANAGER, (LEGAL &
HOUSING PROPERTY FINANCE), SHRI.R.SURENDRAN, AGED 58,
S/O.LATE RAMAN PILLAI, LIC OF INDIA,
DIVISIONAL OFFICE. ERNAKULAM - 682 011.

BY ADV. SRI.VARGHESE C.KURIAKOSE

RESPONDENT/PETITIONER IN THE WP(C) :

K.P.VARUGHESE, KALLARACKAL HOUSE,
ERICADU, PUTHUPPALLY.P.O, KOTTAYAM-686011.

BY ADV. SRI.GEORGE SEBASTIAN

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 30-03-2015,
ALONG WITH WA. 1823/2010, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

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

W.A. Nos. 1822 and 1823 OF 2010

Dated this the 5th day of June, 2015

JUDGMENT

Ashok Bhushan, C.J.

These two appeals have been filed against the common judgment dated 27.07.2010 passed in two writ petitions, W.P.(C) Nos.27863 of 2009 filed by the respondent herein, Sri.K.P. Varghese and W.P.(C) No.29137 of 2009 filed by the Life Insurance Corporation of India the appellants. For convenience the pleadings on record in W.A. No.1823 of 2010 as well as W.P.(C) No.29137 of 2009 shall be referred to. The brief facts giving rise to both these writ petitions are:

The 3rd respondent to the appeals is a Co-operative Bank registered under the Kerala Co-operative Societies Act, 1969. The respondent, Sri.K.P. Varghese was one of the employees of the Bank who was appointed on 01.08.1977. The Adhyapaka Co-operative Bank, 3rd respondent, shall hereinafter be referred to as 'the Bank'. The Bank applied for and obtained a master policy for group gratuity insurance scheme from the LIC, which hereinafter shall be referred to as

the Corporation, for the eligible employees of the Adhyapaka Co-operative Bank Limited. The particulars of employees eligible to join the scheme were submitted along with the proposal for assurance for the life of the employees. The Corporation issued a master policy No.GGI 45281 to the Bank with effect from 01.11.1979 providing the annual renewal on first of November every year. The policy particulars were included in the master policy. The rules of the scheme were annexed to the trust deed which contains other details regarding the policy assurance and premium given under the policy. The Bank had been depositing the annual renewal premium as demanded by the Corporation from time to time. The respondent, Sri.K.P. Varghese, attained the age of superannuation on 30.04.2007. Thereafter the Corporation has remitted an amount of Rs.3,50,000/- to the Bank for payment of gratuity to the respondent. The respondent immediately wrote to the Bank that the amount paid by the Corporation is less than the eligible amount to which respondent was entitled. The Bank immediately wrote a letter on 31.07.2007 to the Corporation asking why the benefit is limited

to Rs.3,50,000/-. The Corporation submitted a reply to the Bank on 14.08.2007, explaining that the Scheme is designed in tune with the benefits under the prevailing limit under the relevant rules, which is Rs.3,50,000/-.

2. Sri.K.P. Varghese, the respondent, also wrote to the Corporation asking the details and thereafter filed a complaint before the Insurance Ombudsman complaining that the Corporation has no right to cut short the benefit to the complainant which are to be paid in accordance with the terms of the policy. It was stated that the complainant was entitled to get gratuity amount above Rs.5 lakhs as per the policy taken by the Bank. It was stated that there was no specification in the master policy fixing the gratuity at Rs.3,50,000/-. The Corporation filed its statement before the Ombudsman. The Ombudsman, after considering the complaint and written statement filed by the Corporation, gave an award dated 22.04.2009 directing the Bank to make further payment of Rs.87,987/-along with 9% interest. The award was rectified on 02.06.2009 directing the Corporation to pay a balance amount of Rs.1,03,090/- together with interest

at the rate of 9% from the date of disbursement of Rs.3,50,000/- till payment along with a cost of Rs.2,000/-. The respondent/petitioner after receiving the award requested the Bank to implement the award. However, when no payments were made, W.P.(C) No.27863 of 2009 was filed by the respondent Sri.K.P. Varghese praying for the following reliefs:

"1. To issue a writ of mandamus or any appropriate writ, order or direction to the respondent to make immediate payment of the amount mentioned in Ext.P1 rectified by Ext.P4 to the petitioner within a time limit to be fixed by this Hon'ble Court.

2. Issue a writ of mandamus or any other appropriate writ, direction or order to the insurance Ombudsman Kochi to see that Ext.P1 is executed at the earliest."

3. After filing of writ petition by the respondent for implementation of the award of Ombudsman, W.P.(C) No.29137 of 2009 was filed by the Corporation challenging the award of Ombudsman. In the writ petition the corporation prayed for the following reliefs:

"(i) Issue a writ, order or direction in the nature of mandamus or other appropriate writ, calling for the records relating to Exts.P8 and P9, examine the same and quash the same holding that the same has not been passed on the basis of

fair and equitable considerations as contemplated under Rule 14 and Rule 16 of the Redressal of Public Grievances Rules, 1998 and specifically on account of the nonconsideration of the contention of the petitioner that premium has been fixed and received limiting the maximum benefit at Rs.3,50,000/-.

(ii) Declare that a provision in the nature of Rule 16(5) of the rules giving an option to the complainant to accept the award should be deemed to be available to the insurance company also and further declare that absence of such provision is against the fundamental principles of equality enshrined in the Constitution of India and is putting one party to the lis on an advantageous position compared to the other party.

(iii) Declare that the 2nd respondent insurance Ombudsman is not empowered to decide an issue touching payment of Gratuity, which is principally an issue between the employer and the employee, and without a proper adjudication of the said issue between the employer and employee through the procedure established by law, merely for the reason that the petitioner happens to be the insurer who has issued a master policy in favour of the employer in which the 3rd respondent figures as beneficiary.”

4. The learned Single Judge heard both the writ petitions together and by judgment dated 27.07.2010 the learned Single Judge modified the award directing the Corporation to pay an amount of Rs.1,72,796.15 to the respondent within one month on which amount payment of

interest at the rate of 6% was also directed to be paid with effect from 25.04.2007 on which date the payment of Rs.3,50,000/- was made. The learned Single Judge held that Insurance Ombudsman has jurisdiction to entertain the complaint and the respondent was fully entitled to recover the policy amount from the Corporation. Learned Single Judge held that as per Clause(B) of the master policy, the Corporation could not have validly restricted the insurance amount payable as Rs.3.50 lakhs. The Corporation, aggrieved by the judgment of learned Single Judge, has filed both the above appeals. W.A No.1823 of 2010 is being treated as the leading appeal for referring the pleadings as noted above.

5. In W.A.No.1823 of 2010, I.A. No.952 of 2010 and in W.A. No.1822 of 2010, I.A. No.951 of 2010 have been filed by the appellants praying for accepting the documents produced as Annexures 1 to 6 to the affidavit. In the affidavit it was stated that the documents elaborating the process could not be placed before the learned Single Judge hence in order to appreciate the contention in the appeals the documents may be accepted and

relied on. Counter affidavit to the Interlocutory Application has been filed both by the Bank as well as the respondent Sri.K.P. Varghese. We have accepted the above said documents on record and we have heard the submissions addressed on the basis of said materials brought by both the parties.

6. Sri.Varghese C. Kuriakose, learned counsel for the appellant Corporation contended that the respondent was entitled for payment of gratuity to the extent of Rs.3.50 lakhs only. He submits that the Bank has generated Cost and Benefit Schedule which clearly indicate that the renewal premium was collected from the Bank and credited the maximum limit of Rs.3.50 lakhs for payment of gratuity. It is submitted that the premium having been collected to the limit of Rs.3.50 lakhs only, no payment of gratuity in excess of Rs.3.50 lakhs can be made by the Corporation. It was contended that Ombudsman could not have entertained the complaint which is related to the entitlement of gratuity to the respondent for which the appropriate authority was the controlling authority under the Payment of Gratuity Act, 1972, before whom the respondent ought to have filed a

complaint. It is submitted that the order of the Ombudsman was also challenged on the above ground which was not correctly appreciated. It is submitted that the master policy holder was the Bank and there was no liability to the Corporation towards the respondent employee of the Bank with whom there was no privity of contract with the Corporation. The accumulated amount was credited to Sri.K.P. Varghese's account which was only Rs.3.50 lakhs and the Corporation has settled the same in full and in favour of the master policy holder. In W.A. No.1822 of 2010 the additional argument raised by the appellant is that the writ petition filed by the respondent was with the prayer to implement the award which was in no way challenged by the respondent. Hence the learned Single Judge committed error in modifying the award by directing the Corporation to pay additional amount which was not even prayed by the respondent.

7. Refuting the submission of learned counsel for the appellants, Learned counsel for the respondent contended that there was no limit, as Rs.3.50 lakhs, for payment of gratuity as per the master policy and under the policy every employee was

entitled for payment of an amount equal to 15 days' salary for each year of service up to the normal retirement date subject to the maximum of 20 months salary. It is submitted that the salary which was received by the respondent was Rs.30,206/- and the limit to the extent of 20 times of Rs.30,206/- was Rs.6,04,120/-. The limit of Rs.3.50 lakhs can nowhere be read in the policy. It is submitted that even the rules of the scheme which have now been brought on record also clearly stipulate the payment of gratuity accordingly. There is no provision contemplating limit of Rs.3.50 lakhs in the master policy. The Corporation cannot deny the full payment to which the respondent was entitled. Referring to the counter affidavit filed by the Bank it has been stated that Annexure R3(c) and R3(d) which were the Cost and Benefit Schedule given by the Bank itself indicate that the credited gratuity of some employees was shown beyond Rs.3.50 lakhs. It is submitted that Ombudsman has rightly made the award in favour of the respondent which has been rightly modified by the learned Single Judge by increasing the payment of additional amount calculating the emoluments to

which the respondent is entitled as per the proviso to Section 4 (2) of the Payment of Gratuity Act, 1972.

8. Learned counsel for the parties have relied on various judgment of this Court and Apex Court which shall be referred to while considering the submissions in detail.

9. Before we proceed to examine the main submission, it is necessary to consider the submission of learned counsel for the appellant that the Ombudsman has no jurisdiction to entertain the complaint. There is no dispute between the parties that the master policy was taken by the bank for the benefit of its employees for payment of their gratuity under the insurance scheme. The respondent was the beneficiary of the master policy and payment has to be made on his retirement. The Insurance Ombudsman has been constituted under the rules made in exercise of Section 114(1) of the Insurance Act, 1938. The rules have been framed namely "Redressal of Public Grievance Rules, 1998". Rule 13 provides the manner in which the complaint is to be made. Rule 13 reads as under:

"13. Manner in which complaint is to be made.- (1)

Any person **who has a grievance against an insurer**, may himself or through his legal heirs make a complaint in writing to the Ombudsman within whose jurisdiction the branch or office of the insurer complaint against is located."

10. Rule 13 contemplates a complaint by any person who has a grievance against the insurer. The respondent is a person who has a grievance against the insurer, since he has not been paid gratuity amount under the insurance scheme as per the master policy, rather in the payment of gratuity a limit of Rs.3.50 lakhs has been imposed by the Corporation which is objected to. The Corporation being the insurer the complaint filed by the respondent was fully entertainable by the Ombudsman and no error was committed by Ombudsman in giving the award.

11. The main issue which is to be decided in W.A. No.1823 of 2010 is as to whether in the master policy as well as in the Insurance Scheme there was any provision by which the gratuity amount is limited to a maximum extent of Rs.3.50 lakhs or whether the respondent is entitled for payment of assured

amount as per the policy. In this context it is relevant to quote certain provisions of the master policy as well as the rules of the scheme. Master policy has been produced by the Corporation as Exhibit P1 to the writ petition. Policy particulars were also given in master policy. Clause (B) explains the assurances and premium provided in the master policy which reads as under:

"(B) Assurances and Premiums:-

1. Sum Assured : The Sum Assured under the Pure Endowment Assurance shall be an amount equal to 15 days salary of the member as on the Entry date or the Annual Renewal Date, as the case may be for each year of service upto the Normal Retirement Date subject to the maximum of 20 months salary."

12. According to the policy the normal retirement age is the date on which the member attains the age of 58 years. Clause (1)(i) of the master policy defines the "rules"; (ii) defines the "employees" and "members" is defined in Clause 1 (iv). Clause (2) of the policy provides as under:

"2. The Grantees shall hold the Policy and all benefits payable hereunder UPON TRUST for the benefit of the Members and other person or persons entitled to the benefits hereunder in accordance with the Rules."

13. The definition of "Eligible Employee" is explained in Clause 1 (iii). Thereafter, the rules have been brought on record by the Bank in its counter affidavit to I.A. No.952 of 2010. The rules of Group Gratuity cum Life assurance Scheme produced as Annexure R3(b), Clause (6) defines contributions which is as follows:

"6. Contributions :

(i) Annual Contributions : There shall be duly paid for each Member annually in advance on the Entry Date and subsequent Annual Renewal Dates such contributions as are required to secure the Assurances hereinafter described. The contributions shall be paid throughout the future service of the Member until his Normal Retirement date, unless determined earlier under the Rules.

When an increase in Assurances is effected consequent upon increase in Salary as provided in Rule 7(b), the annual contributions payable for the Member shall be appropriately adjusted. The contributions shall be ascertained by the Corporation under the appropriate Plans of Assurances."

14. Neither in the master policy nor in the rules, there is any clause which may indicate that there is any limit over the maximum amount payable as gratuity except the limit of maximum of 20 months' salary. The Corporation which had

given the master policy delineating the terms and conditions cannot shirk its responsibility for making the payment to the employee on its retirement at the normal retirement age as per policy. The submission which has been pressed by learned counsel for the appellant is that the Schedule of Cost and Benefit which have been brought on record indicate that the annual renewal premium was charged on the gratuity amount with a ceiling limit of maximum Rs.3.50 lakhs. It is also true that in few years the credit shown was more than Rs.3.50 lakhs, but it is submitted that the excess premium was adjusted to the subsequent years. The Bank has filed a counter affidavit to I.A.No.952 of 2010 by which reply has been given to the additional documents brought on record by the Corporation. The original proposal submitted by the Bank, the details of the employee and the rules of Group Gratuity cum Life assurance scheme were brought on record which documents do not indicate that there was any ceiling on the maximum amount of gratuity to be paid. Learned counsel for the respondent has also referred to Appendix I which gives the contingency on the happening of

which the benefit become payable. In the Appendix I following was mentioned :

"Fifteen days salary of the Member as on the date of retirement of death, as the case may be, for each year of service subject to a maximum of 20 months salary."

15. As noted above, the Cost and Benefit Schedule has also been annexed by the Bank as Annexure R3(c) and R3(d) which indicate that there are employees whose gratuity is shown as more than Rs.3.50 lakhs. The Corporation has explained that it was by mistake that higher amount of gratuity was shown. Be as it may, there being clear stipulation in the master policy and in the rules that employee on his retirement, is entitled for gratuity for 15 days' salary of each completed year and upto a maximum of 20 times of the salary and no other limit can be read in the entitlement of gratuity.

16. The Apex Court in **General Assurance Society v. Chandmull Jain and another** [AIR 1966 SC 1644] had occasion to construe the contract of insurance. Although in the master policy or rule there is no ambiguity, the Apex Court laid down

that Insurance Contract, in case of any ambiguity, has to be read against the company. Following was laid down in paragraph 11:

"11. A contract of insurance is a species of commercial transactions and there is a well-established commercial practice to send cover notes even prior to the completion of a proper proposal or while the proposal is being considered or a policy is in preparation for delivery. A cover note is a temporary and limited agreement. It may be self-contained or it may incorporate by reference the terms and conditions of the future policy. When the cover note incorporates the policy in this manner, it does not have to recite the terms and conditions, but merely to refer to a particular standard policy. If the proposal is for a standard policy and the cover note refers to it, the assured is taken to have accepted the terms of that policy. The reference to the policy and its terms and conditions may be expression in the proposal or the cover note or even in the letter of acceptance including the cover note. The incorporation of the terms and conditions of the policy may also arise from a combination of references in two or more documents passing between the parties. Documents like the proposal, cover note and the policy are commercial documents and to interpret them commercial habits and practice cannot altogether be ignored. During the time the cover note operates, the relations of the parties are governed by its terms and conditions, if any, but more usually by the terms and conditions of the policy bargained for and to be issued. When this happens the terms of the policy are incipient but after the period of temporary cover, the relations are

governed only by the terms and conditions of the policy unless insurance is declined in the meantime. Delay in issuing the policy makes no difference. The relations even then are governed by the future policy if the cover notes give sufficient indication that it would be so. In other respects there is no difference between a contract of insurance and any other contract except that in a contract of insurance there is a requirement of *uberima fides*, i.e., good faith on the part of the assured and the contract is likely to be construed *contra proferentem* that is against the company in case of ambiguity or doubt. A contract is formed when there is an unqualified acceptance of the proposal. Acceptance may be expressed in writing or it may even be implied if the insurer accepts the premium and retains it. In the case of the assured, a positive act on his part by which he recognises or seeks to enforce the policy amounts to an affirmation of it. This position was clearly recognised by the assured himself, because he wrote, close upon the expiry of the time of the cover notes, that either a policy should be issued to him before that period had expired or the cover note extended in time. In interpreting documents relating to a contract of insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new contract, however reasonable, if the parties have not made it themselves. Looking at the proposal, the letter of acceptance and the cover notes, it is clear that a contract of insurance under the standard policy for fire and extended to cover flood, cyclone etc. had come into being."

17. The master policy and the rules which are part of the policy have been unequivocally promised to pay gratuity as noted above subject to maximum of 20 months salary and no other limit can be read in payment of gratuity. Learned counsel for the appellant placed heavy reliance on the Division Bench judgment of this Court in **The Travancore Cements Employees Co-operative Bank Ltd. v. Ramachandran Nair** [2014 (1) KLT 889]. In the above case the writ petitioner who was the Secretary of the Bank retired on 31.05.2007. LIC issued a cheque for Rs.5,36,567/- to the Bank for payment of gratuity. The Bank disbursed only an amount of Rs.3.50 lakhs. According to the petitioner therein withholding of a portion of gratuity due to him is illegal and contrary to the law laid down by this Court in *Retnavally v. Ambalapadu Service Co-operative Bank Ltd.* [2005 (3) KLT 320]. The writ petition was allowed against which the appeal was filed by the Bank. The Bank relied on a resolution wherein the Managing Committee decided to withhold the amount from the LIC limiting the maximum gratuity payable to Rs.3.50 lakhs, since any additional liability on account of payment of

higher rate of contribution, i.e. in order to pay gratuity above the ceiling limit, would adversely affect the financial stability of the Bank. In the above context the Division Bench held that the bank was justified in resolving to limit the payment of gratuity to Rs.3.50 lakhs. In the present case the Bank has neither taken any resolution nor has limited the payment of gratuity to the employee in any manner. Rather, to the contrary, the Bank has filed a counter affidavit to the writ petition filed by the Corporation opposing the prayer of Corporation. It is useful to refer to the contents of the counter affidavit filed by the Bank. Paragraph 4 of the counter affidavit reads as under:

"4. The averments contained in paragraph 3 of the affidavit under reply are not fully correct and hence denied. The reference to the process of renewal made in this paragraph of the affidavit under reply is made with a definite intention to put forward a totally new plea. As already pointed out such a plea is not founded on the pleadings before the learned single judge. Nor does it find a place in the memorandum of writ appeal. Therefore such a new case cannot be permitted to be introduced in the guise of an application seeking to produce additional materials at the appellate stage. The appellant seems to project the case that the original terms of the policy were varied in the

process of renewal and therefore the original terms of the policy cannot be relied on. This contention is liable to be rejected in view of the specific provisions contained in the general conditions appended to the master policy which specifically deals with the procedure to be followed to amend the terms of the original master policy. It is not even contended by the appellant that the appellant has ever attempted to amend the terms of the original policy in the manner mandated in the conditions in the master policy enabling the appellant to vary the terms of the policy. It is by now trite that when a specific procedure is contemplated to do a particular act it can be done only in the manner so provided and not in any other manner. Therefore the feeble attempt on the part of the appellant to raise a plea of novation at the stage of appeal is liable to be rejected."

18. Thus the judgment of Division Bench in **The Travancore Cements Employees Co-operative Bank Ltd.** (supra) has no application in the facts of the present case. More so, the Division Bench, in the above case, had relied on an earlier Division Bench judgment in *Nedupuzha Service Co-operative Bank Ltd. v. Rugmini* [2011 (3) KLT 134]. In the case of *Nedupuzha Service Co-operative Bank Ltd.* (supra) in paragraph 6 of the judgment it was categorically stated that Group Gratuity Policies taken by the Bank with the LIC was limited the gratuity

liability to each of the employee including the respondents at the maximum amount of Rs.3.50 lakhs provided under Section 4(3) of the Act. Paragraph 6 of the judgment reads as under:

"6. So far as other Writ Appeals are concerned, the appellant Banks have passed on the entire benefits received under the Policies from the LIC to each of the retired employees. However, the learned Single Judge held that the respondent employees are entitled to gratuity in terms of the Act, i.e., @ 15 days' wages for each year completed in service. The claim is in excess of statutory limit of Rs.3.5 lakhs provided under S.4(3) of the Act. It is seen that Group Gratuity Policies taken by the appellant Banks with the LIC limited the gratuity liability to each of the employee including the respondents at the maximum amount of Rs.3.5 lakhs provided under S.4(3) of the Act. Admittedly, the LIC has collected premium from the appellants for the maximum amount of gratuity payable under the statute to each of the employee. We do not know on what basis the respondents can claim gratuity in excess of statutory limit, which is covered in the Policies taken by the appellant Banks. As already held above, benefit of the employees is limited to the gratuity amount receivable under the Policy, and when it is limited to the statutory amount of Rs.3.5 lakhs the LIC passes on only the said amount to the appellants, which in turn should go to the employees. The respondents' case is based on Circular No.25/99, which also does not say that the appellants have any liability over the statutory limit of Rs.3.5 lakhs. We, therefore do not find any basis for the learned Single Judges to hold that

appellants are entitled to gratuity over and above the statutory limit, which is covered by the policies and passed on by the appellants to the respondent employees on receipt from the LIC. Accordingly, WA Nos.980, 982, 1233, 1666, 1924 of 2010, 470 & 472 of 2011 are allowed vacating the judgments of the learned Single Judges under appeals.”

19. In paragraph 18 of the judgment in **The Travancore Cements Employees Co-operative Bank Ltd.**

(supra), following observations were made by the Division Bench:

“18. In the case on hand, as borne out from the documents on record and the pleadings of both sides, the Group Gratuity Scheme with the L.I.C limited the maximum gratuity payable to an employee of the appellant-Bank to Rs.3.5 Lakhs, which was the maximum limit under sub-section (3) of S.4 of the Payment of Gratuity act during the relevant time and the L.I.C had collected contribution from the Bank only for covering the said statutory limit. Moreover, in Annexure I statement of account the gratuity lying to the credit of the 1st respondent is shown as Rs.3.5 lakhs only. Though, on 14.5.2007, the Bank decided to request the L.I.C to sanction gratuity amount to its employees without any ceiling limit, the said decision was cancelled on 23.10.2007, since it attracts additional liability on account of payment of higher rate of contribution. Pursuant to the said decision, the Bank has also remitted back the excess amount of Rs.1,86,567/- to the L.I.C on 12.11.2007 itself and as such no case of any unjust enrichment by the appellant-Bank

could be made out in the facts and circumstances of the case pleaded by the 1st respondent. The benefit available to the 1st respondent who is an employee of the appellant-Bank under the Group Gratuity Scheme with the L.I.C is limited to the statutory ceiling of Rs.3.5 Lakhs, prescribed under sub-section (3) of S.4 of the Payment of Gratuity Act, during the relevant time. In the absence of a contract or agreement to receive better terms of gratuity, the 1st respondent is not legally entitled for gratuity over and above the statutory limit of Rs.3.5 lakhs, especially when the contribution paid by the employer is only for such statutory limit."

20. The crux of the matter is "what is the contract with the insurer". The relevant clause of the master policy and the scheme under which the master policy was granted are crucial to determine the entitlement of gratuity amount. As noted above, the master policy and the Scheme clearly contemplated the payment of gratuity to the extent of 15 days salary of each completed year subject to a maximum of 20 times of the salary. Thus the only limit for payment of gratuity was 20 times of the salary and no other limit, limiting the gratuity to Rs.3.50 lakhs, was envisaged.

21. The submission of the Corporation that there was limit of Rs.3.50 lakhs in payment of gratuity can also not be accepted due to another reason. The limit of Rs.3.50 lakhs was not even there in the Payment of Gratuity Act, 1972 when the policy was taken i.e. on 01.11.1979. At the time when policy was introduced by the Corporation, the statutory limit as per Section 4(3) was only Rs.50,000/- which was increased to one lakh on 24.05.1996 and subsequently it was substituted as Rs.3.50 lakhs. Thus it cannot be even imagined that when the policy was taken any limit of Rs.3.5 lakhs towards the maximum payment of gratuity was envisaged. The Bank had always paid renewal premium as demanded by the Corporation. The Ombudsman in its judgment has rightly observed that in the event the Corporation failed to realise any other premium from the Bank, the employee shall not suffer. In view of the aforesaid, we are of the view that the payment of gratuity to the respondent could not have been limited to Rs.3.50 lakhs and no error was committed by learned Single Judge in holding that the payment was not restricted to the amount of Rs.3.50 lakhs. In

view of the above discussion WA No.1823 of 2010 deserves to be dismissed.

22. W.A. No.1822 of 2010 is filed by the Corporation against the judgment of learned Single Judge in W.P.(C) No.27683 of 2009. As noted above, the respondent who was the writ petitioner had only prayed for a mandamus directing the respondent to make payment of the amount mentioned in Ext.P1 and rectified in Ext.P4 award and to execute the order of Insurance Ombudsman at the earliest. The respondent, after the receipt of the award, has accepted the award and consent letter has been filed as Ext.P2 by the petitioner in W.P.(C) No.27863 of 2009. The consent letter dated 20.05.2009 reads as follows:

"With reference to the Award No.IO/KCH/LI/010/2009-10 (in my complaint referred to above) of the Insurance Ombudsman forwarded to you, I hereby give my unconditional acceptance of the above Award in full and final settlement in respect of my above complaint."

23. The petitioner having accepted the award as rectified and having not raised any other issue in his writ petition, except the enforcement of the award, the learned Single Judge

committed error in modifying the award by directing payment of further amount. The learned Single Judge has modified the award of Ombudsman on the premise that calculation of 15 days' wages has to be made in accordance with Section 4(2) explanation. On that basis, instead of directing for payment of an amount of Rs.1,03,090/- with 9% interest as awarded by Ombudsman, the learned Single Judge has enhanced the amount to Rs.1,72,796.15 with 6% interest. 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. There shall however be a direction to the appellant to make payment of an amount of Rs.1,03,090/- with 9% interest as awarded by Ombudsman with effect from 25.04.2007. The entire payment be made to the respondent, Sri.K.P.Varghese, within a period of one month from today.

WA Nos. 1822 and 1823 of 2010

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In the result, W.A. No.1823 of 2010 is dismissed and W.A. No.1822 of 2010 is partly allowed as above. There shall be no order as to costs.

**Ashok Bhushan,
Chief Justice.**

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

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