

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE**

THURSDAY, THE 1ST DAY OF OCTOBER 2015/9TH ASWINA, 1937

WA.No. 1 of 2015

JUDGMENT DATED 12-11-2014 IN WP(C) 25584/2011
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APPELLANT(S)/3RD RESPONDENT:

**KERALA FOREST RESEARCH INSTITUTE,
PEECHI, THRISSUR DISTRICT, PIN - 680 653,
REPRESENTED BY ITS REGISTRAR.**

**BY ADVS.SRI.S.M.PREM
SRI.P.RAMACHANDRAN (PALAKKAD)**

RESPONDENT(S)/PETITIONERS AND RESPONDENT 1 & 2:

- 1. DR.C.RENUKA,
SCIENTIST - G, KERALA FOREST RESEARCH INSTITUTE,
PEECHI, THRISSUR - 680 653.**
- 2. DR.GEORGE MATHEW,
SCIENTIST - G, KERALA FOREST RESEARCH INSTITUTE,
PEECHI, THRISSUR - 680 653.**
- 3. KERALA FOREST RESEARCH INSTITUTE STAFF ASSOCIATION,
REPRESENTED BY ITS PRESIDENT, DR.T.V.SAJEEV, SCIENTIST,
KERALA FOREST RESEARCH INSTITUTE, PEECHI, THRISSUR - 680 653.**
- 4. KERALA STATE COUNCIL FOR SCIENCE,
TECHNOLOGY & ENVIRONMENT,
REPRESENTED BY EXECUTIVE VICE PRESIDENT,
SASTHRA BHAVAN, PATTOM, THIRUVANANTHAPURAM - 695 004.**
- 5. THE MEMBER SECRETARY,
KERALA STATE COUNCIL FOR SCIENCE,
TECHNOLOGY & ENVIRONMENT, SASTHRA BHAVAN, PATTOM,
THIRUVANANTHAPURAM - 695 004.**

**R1 & R2 BY ADVS. SRI.THAMPAN THOMAS
SRI.B.V.JOY SANKER
SRI.SHAFFIE THOMAS
SMT.JANCY ALEX
SRI.SANEESH KUNJUKUNJU
SRI.THARUN THANKACHEN PERUMAL**

R3 BY ADV. SRI.ANOOP V. NAIR

**R4 & R5 BY ADVS. SRI.N.NANDAKUMARA MENON (SR)
SRI.GEORGE ZACHARIAH, SC**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 09-09-2015,
ALONG WITH WA. 2/2015 AND CONNECTED CASES THE COURT
ON 01-10-2015, DELIVERED THE FOLLOWING:**

“C.R.”

ASHOK BHUSHAN, C.J.

and

A.M. SHAFFIQUE, J.

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**W.A. Nos.1 of 2015, 1992 of 2014, 2 of 2015,
4 of 2015, 5 of 2015, 7 of 2015, 10 of 2015,
21 of 2015, 32 of 2015, 1313 of 2015,
1526 of 2015, 1578 of 2015, 1628 of 2015,
1651 of 2015 & 1755 of 2015**

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Dated this the 1st day of October, 2015

J U D G M E N T

Ashok Bhushan, C.J.

All these Writ Appeals have been filed against the common judgment dated 12.11.2014 delivered by a learned Single Judge in W.P(C) No.2241 of 2012 and other connected Writ Petitions. All the Writ Petitions have been allowed by the learned Single Judge, aggrieved by which judgment respondents to the Writ Petitions have come up in these Writ Appeals.

2. The Writ Appeals can be divided into three groups: The first group consists of Writ Appeal Nos.1 and 2 of 2015 filed by the Kerala Forest Research Institute (for short, 'the KFRI') which Institute was the 3rd respondent in W.P(C)

No.2241 of 2012 and W.P(C) No.25584 of 2011. The second group consists of W.A. Nos.4, 5, 7, 10, 21, 32 of 2015 and 1992 of 2014 filed by the Kerala State Council for Science and Technology and Environment and others. The third group consists of the Writ Appeals filed by the State being W.A. Nos.1313, 1526, 1578, 1628, 1651 and 1755 of 2015 challenging the same judgment. By the judgment dated 12.11.2014, Writ Petition Nos.2241 of 2012, 25584 of 2011, 26114 of 2011, 27835 of 2012, 27836 of 2012, 27845 of 2012 and 2235 of 2012 have been allowed.

3. Facts and issues raised in all the Writ Petitions as well as the Writ Appeals being common, it shall suffice to refer to the pleadings in W.P(C) No.2241 of 2012 and W.A. Nos.2, 1578 and 1992 of 2014 filed against the judgment of the learned Single Judge. A few facts of other Writ Petitions and Writ Appeals shall also be referred to, if necessary.

4. The background facts giving rise to these Writ Appeals are: Petitioners in the Writ Petitions were initially appointed in the KFRI and Centre for Earth Science Studies (for short, "the CESS"). Apart from these two Institutes, there

were 4 other Research Institutes functioning in the Kerala State, viz., Tropical Botanic Garden and Research Institute, Centre for Water Resources Development and Management, National Transportation, Planning and Research Centre and Kerala School of Mathematics. The Government by Order dated 06.11.2002 decided to constitute a registered Society, viz., Kerala State Council for Technology and Environment (for short, "the KSCSTE") as an autonomous body to bring into the umbrella of the Council all the six Institutes. On 26.11.2002, the KSCSTE came into existence as a registered Society under the Travancore Cochin Literary, Scientific and Charitable Societies Act, 1955. The Council also framed separate Rules for regulating conditions of service and other matters which were made effective from 19.06.2003. All employees working in the aforementioned six Institutes started to be governed by the Service Rules and Regulations of the State Council with effect from 19.06.2003. Rules and Regulations framed by the Council are comprehensive Rules and Regulations covering the service conditions of the employees regarding promotion,

leave, conduct, gratuity, etc. Petitioners in W.P(C)No.2241 of 2012 and 25584 of 2011 entered into the service of the KFRI as Scientists and after the Institute being governed by the Council, they started to be governed by the Rules and Regulations of the Council. The gratuity amount payable to employees under the KFRI have been linked with the Life Insurance Corporation of India (for short, "the LIC) whereunder premiums are paid by the KFRI to the LIC based on the gratuity amount payable to the employees concerned in terms of the Rules and Regulations of the Council. Even prior to the framing of the Rules and Regulations by the Council, there were separate rules for payment of retiral benefits by the Institutes. The KFRI also contained Rule 23A providing for payment of gratuity at the rate of half month's wages which the employee drew last, for each completed year of service qualifying for gratuity. The employees of KFRI even before being governed by the Rules and Regulations used to get payment of gratuity without there being any ceiling and after enforcement of the Rules and Regulations of the Council, the employees continued to

be paid gratuity without any ceiling. Petitioners in W.P(C) No.2241 of 2012 have brought on record the payments made to Dr C.Renuka of an amount of Rs.15,37,218/- by cheque dated 02.07.2011 issued by the LIC and to Dr George Thomas of an amount of Rs.15,67,132/- by cheque dated 11.6.2011 issued by the LIC. Both Dr C.Renuka and Dr George Mathew are petitioners 1 and 2 in W.P(C) No.25584 of 2011. Under the Payment of Gratuity Act, 1972 (for short, "the 1972 Act") by Section 4(3) there is a ceiling of Rs.10 lakhs for payment of gratuity payable to an employee (as amended by Act 15 of 2010). Payment of gratuity to the Scientists working under the Council was thus throughout made through the LIC without there being any ceiling.

5. Scales of pay were revised on the recommendations of the Sixth Pay Commission with effect from 01.01.2006. The State Government issued a Government Order dated 08.01.2010 revising the pay scales of the Scientific and Technical staff of the Council. The Central Government in their Pay Revision Orders meant for CSIR pay scale caused in Central Institutions has stipulated a

maximum ceiling of Rs.10 lakhs as gratuity due to which there arose some doubts whether such ceiling limit of Rs.10 lakhs would be applicable to the personnels of the Council. The Executive Vice President of the Council issued an order on 21.05.2010 that payment of gratuity to the employees of the Council and Research Centres do not stipulate any upper limit for payment of gratuity payable to such employees at the time of retirement. It was ordered that gratuity shall be paid without any upper limit. The Member Secretary of the Council issued a letter dated 20.09.2011 referring to the objections raised by the Government on payment of gratuity in excess of Rs.10 lakhs. The Member Secretary directed that the gratuity amount payable to the employees shall be limited to Rs.10 lakhs till a decision is received in the matter. Order dated 20.09.2011 was challenged by the Scientists and employees working in the KFRI and CESS by different Writ Petitions. In W.P(C) No.2241 of 2012, the following reliefs were prayed by the petitioners:

“i) to issue a writ of certiorari or writ order or direction calling for records in case and quash Ext.P8 order and further proceedings to put a ceiling on gratuity.

ii) to issue a writ of mandamus or other appropriate writ order or direction compelling the respondents to pay gratuity to the petitioners without any ceiling but as per the conditions of the appointment.

iii) to issue any such other writ order or direction this Honourable Court deems fit in the circumstances of the case; and

iv) to award the cost of petition.”

6. Apart from W.P(C) Nos.2241 of 2012 and 25584 of 2011 which were filed by the Scientists working in the KFRI, other Writ Petitions were filed by the employees of CESS. The CESS did not appear to have any insurance tie up effectuating gratuity amount but it is governed by the same set of Rules of the Council.

7. It shall be sufficient to refer to the facts in W.P.(C) No.26114 of 2011 for deciding all the Writ Petitions filed by the employees of the CESS. Petitioners pleaded in the Writ Petition that CESS was originally registered as a Government Society in 1978 but it came under the umbrella of the Council on 21.11.2002. Service Rules were adopted by the Council on 12.03.2004 and thereafter gratuity is being paid to various employees as per Rule 14 of the Service Rules of the Council. It was pleaded that employees who retired in

the year 2011 were also paid gratuity according to Rule 14 of the Rules of the Council. Being aggrieved by the order issued by the Member Secretary dated 20.09.2011 (Ext.P5), the Writ Petition was filed for the following reliefs:

“i) To issue a writ of certiorari or other appropriate writ or direction calling for the records relating to Ext.P5 Communication and connected records and quashing the same.

ii) A writ of mandamus, directing the respondents to pay gratuity to the petitioner as per Rule 14 of Section 2 Part I of the Service Rules and other relevant rules and regulations and

iii) Such other reliefs that the petitioner may pray for and the Court deems fit.”

8. Counter affidavits were filed by the Council and Research Institutes where the petitioners were working as well as the State Government. It shall be sufficient to refer to the counter affidavits in W.P(C) No.2241 of 2012. The Council filed its counter through the Executive Vice President. In the counter affidavit of the Council it was pleaded that the Council is an autonomous body and the petitioners are governed by the Council Rules and Regulations with effect from 19.06.2003. It was pleaded that as per the relevant rules adopted by the Council, the retiree

will be granted gratuity at the rate of half month's emoluments which the employee drew last for each completed year of service qualifying for gratuity. Payment of gratuity to the retired employee is regulated by Rule 14 of the General Conditions of Service (Part I Section II) of the Council Rules and Regulations. Enrollment in the group gratuity scheme of the LIC is only an internal arrangement of KFRI. The tie up with LIC is on the condition that KFRI will regularly remit the premium to the Scheme and the LIC will in return disburse the gratuity amount of the retirees as per the terms and conditions of the Council Rules. With regard to payment of gratuity to Dr C.Renuka and Dr George Mathew, it was pleaded that they were paid gratuity in excess of Rs.10 lakhs as per the Council Rules and Regulations which do not prescribe any ceiling for payment of gratuity. It was pleaded that the Council is fully funded by the State Government for payment of salary and terminal benefits and the Council has to listen to the directives of the Government and further more in view of the objections of the Finance Department, letter dated 20.09.2011 was issued.

9. In the counter affidavit filed by the State it has been pleaded that as per Section 4(3) of the 1972 Act, amount of gratuity payable to employees shall not exceed Rs.10 lakhs. It is pleaded that the Council and the Research Institutes under it are governed by the Council Rules and Regulations with effect from 19.06.2003. The Council is running with the grant provided by the State Government and the Government is the authority in deciding matters relating to the service conditions of the employees of the Council. Even though no ceiling is imposed on the payment of gratuity of Council employees, the payment of gratuity in the Council and the Research Institutes is in excess of what has been prescribed in the State/Central Government Rules. A rule in par with the State/Central Government only can be followed by the Council and the Research Institutes. Therefore the action of the Council in having granted gratuity without any ceiling is irregular.

10. The learned Single Judge after hearing all the parties by his judgment dated 12.11.2014 allowed all the Writ Petitions. The learned Single Judge held that employees

of the Institutes under the Council who are governed by the Rules and Regulations framed by the Council which have been made with effect from 19.06.2003 and as per Rule 14 Scientists and employees are entitled to receive the gratuity at the rate of half month's emoluments which the employee drew last for each completed year of service qualifying for gratuity. The learned Single Judge held that the Rules and Regulations as provided in Rule 14 is better condition of service for Scientists and employees of the Council and Institutes and by virtue of Section 4(5) of the 1972 Act the employees are entitled to have the benefit of better terms and conditions of service. Section 4(5) has an overriding effect on Section 4(3), hence payment of gratuity to employees cannot be with any ceiling of Rs.10 lakhs. The learned Single Judge further held that the Government have no jurisdiction to issue any direction not to pay gratuity beyond the ceiling limit of Rs.10 lakhs. The learned Single Judge held that the Rules and Regulations can be amended as per the Rules which having not done, the petitioners are clearly entitled to receive gratuity as per Rule 14. The

learned Single Judge further held that the internal arrangement with LIC to make payment of gratuity was an arrangement for payment of gratuity as per the convenience of the Institutes. It is submitted that the LIC has paid gratuity irrespective of any ceiling limit which is evident from the material brought on record. Premium to the LIC was paid by the Institutes and payment by the LIC was in accordance with the premium received.

11. We have heard Shri N.Nandakumara Menon, learned Senior Advocate assisted by George Zachariah for the Council and CESS and Shri S.M. Prem has appeared for KFRI. Shri P.I.Davis, learned Senior Government Pleader appeared on behalf of the State. Shri Thampan Thomas, Smt.Sumathy Dandapani, learned Senior Advocate and other counsel have been heard for the Writ Petitioners.

12. Learned counsel for the appellants in support of the appeals contended that provisions of Section 4(3) of the 1972 Act are applicable for payment of gratuity to the Writ Petitioners and there being statutory ceiling of Rs.10 lakhs, payment of gratuity beyond Rs.10 lakhs could not have been

made and the learned Single Judge committed error in directing payment of gratuity without any ceiling. Shri N.Nandakumara Menon, learned Senior Advocate contended that maximum limit of Rs.10 lakhs as envisaged by Section 4 (3) of the 1972 Act is fully applicable and there being no challenge to Section 4(3) payment of gratuity can be made only with the ceiling of Rs.10 lakhs. Rules and Regulations of the Council have been wrongly construed by the learned Single Judge as terms of contract of employment for applying Section 4(5) of the 1972 Act. The learned Single Judge further committed error in holding that the Government has no power to issue directions to the Council, the judgment would render the statutory provisions under the 1972 Act otiose.

13. Shri S.M.Prem, learned counsel for the KFRI raised similar submissions as raised by Shri N.Nandakumara Menon, learned Senior Advocate.

14. Shri P.I. Davis, learned Senior Government Pleader challenging the judgment of the learned Single Judge contends that the learned Single Judge ought not have

permitted the petitioners to receive payment of gratuity beyond Rs.10 lakhs. Council Rules does not provide for payment of gratuity beyond Rs.10 lakhs. The learned Single Judge ought to have found that any payment made beyond the maximum liability of the employer to pay the employee will result in illegal enrichment of the employee for which he has no legal right to receive. The learned Single Judge erroneously held that the Council Rules amounts to a contract between employer and employee for the purpose of giving the protection of Section 4(5) of the 1972 Act. The learned Single Judge ought to have found that the appellants cannot be forced to make payment of contribution of a premium to the Insurance Company towards payment of gratuity to the employees over and above what is the maximum permissible as per Section 4(3) of the Act. The learned Single Judge erred in holding that Council Rules provide for better terms and conditions of service and attracted Section 4(5). Rules of the Council have not received the approval of the Government. The learned Single Judge went wrong in placing reliance on the fact that

some of the retired employees have received more amounts than Rs.10 lakhs by way of gratuity and those employees who have received more than Rs.10 lakhs have been directed to refund the excess payment. The learned Single Judge ought to have dismissed the Writ Petition holding that Section 4(3) of the 1972 Act cannot be nullified on the basis of the provisions contained in Section 4(5) of the 1972 Act.

15. Learned counsel for the Writ Petitioners refuting the submissions of the learned counsel for the appellants contended that ceiling of Rs.10 lakhs as prescribed by Section 4(3) is not applicable in the facts of the present case since under the Rules and Regulations, i.e., Rule 14, the Scientists and employees have been provided better terms for payment of gratuity and the ceiling under Section 4(3) shall not be applicable. It is submitted that Section 4(5) fully protected payment of gratuity to the petitioners without any ceiling. Learned Single Judge rightly held that payment has to be made without any ceiling. It is submitted that after enforcement of the Council Rules on 19.06.2003 and even before the enforcement of the said Rules, employees of the

Research Institutes were paid gratuity without any ceiling as prescribed under Section 4(3) of the 1972 Act. It is submitted that payment of gratuity to the petitioners of W.P(C) No.25584 of 2011 has been brought on record which indicate that in the year 2011 the LIC has issued cheque for Rs.15,37,218/- being payment of gratuity to Dr C.Renuka and cheque for Rs.15, 67,132/- to Dr George Mathew. It is stated that the Institutes have paid premium to the LIC and payment of gratuity has been made by the LIC as per the premium received, payment of which amount cannot be denied to petitioners of W.P(C) No.25584 of 2011 and other petitioners. It is submitted that Council being autonomous body and it having framed Rules and Regulations for regulating the service conditions of the employees, service conditions including payment of gratuity shall be governed by the Rules and Regulations of the Council. The State cannot issue any directions for payment of gratuity by fixing any ceiling. The learned Single Judge has rightly allowed the Writ Petitions.

16. Learned counsel for the parties have placed

reliance on various judgments of the Apex Court and this Court which we shall consider in detail while considering the submissions.

17. From the submissions of the learned counsel for the parties and the pleadings on record, the following are the issues which arose for consideration in these Writ Appeals.

1. Whether Rule 14 of the Rules and Regulations framed by the Council for payment of gratuity can be treated as better terms of gratuity under any award, agreement or contract?

2. Whether ceiling as prescribed in Section 4(3) of 1972 Act is applicable for payment of gratuity to the Scientists and employees of the council?

3. Whether the State Government has jurisdiction to direct payment of gratuity to the Scientists and employees of the Council with ceiling of Rs.10 lakhs as per Section 4(3) of the 1972 Act disregarding Rule 14 of the Rules and Regulations of the Council?

All the issues being interconnected are taken together.

18. Rules and Regulations of the State Council have been framed which has been in force from 19.06.2003. Rules and Regulations of the State Council are comprehensive in nature and governs not only terms and conditions of service of the employees under the Council rather composition of the Council, functioning of the Council and other aspects. Section II of the Rules contains heading “Service Rules and other relevant Rules and Regulations”. Rule 3 defines Member of the Council. Rule 3.1 which provides for composition of State Council is quoted below:

“3.1 The members of the State Council shall consist of the following:

Chief Minister	President
Minister for Industries	Vice President
Minister for Finance	“
Minister for Agriculture	“
Minister for Health	“
Minister for Education	“
Minister for Forests	“
Minister for Water Resources	“
Vice Chairman, State Planning Board	“
Chief Secretary to Govt. of Kerala	
Executive Vice President	
Secretary, Department of Science and Technology, Government of India	

Vice Chancellors of Cochin University of Science and
Technology and Kerala Agricultural University

Secretary to Government, Finance Department

Five eminent persons nationally known for their expertise in
S&T, Industry and Environment (nominated by
Government)

Director, Vikram Sara Bai Space Centre,
Thiruvananthapuram

Director, Regional Research Laboratory,
Thiruvananthapuram

Director, Sree Chitra Tirunal Institute for Medical Sciences
and Technology, Thiruvananthapuram

Secretary to Government, Planning and Economic Affairs
Department

Member Secretary (nominated by Government)

Directors of two Science and Technology Institutions under
the Council to be nominated in rotation by the
President/Government

Notwithstanding anything contained above, the composition
of the first State Council shall be as given in the Article 4 of the
Memorandum of Association.”

One more provision in the Rules is Rule 19 which deals with
amendment of Memorandum of Association and Rules and
Regulations. Thus the Rules itself provides a mechanism for
amendment of Rules.

19. Now we come to the relevant Rule regulating
gratuity which is Rule 14. Rule 14 is quoted as follows:

“14. **Gratuity.**

14.1 In addition to the benefits otherwise admissible, an

employee retiring from service Rule 4 may be granted by the competent authority, gratuity at the rate of half month's emoluments which the employee drew last, for each completed year of service qualifying for gratuity, provided such employee has rendered not less than five years of service in the Council or any of the Centres under the Council.

Note: i. An employee whose service is terminated under Rule 3 or resigns under Rule 5 may also be granted by the competent authority, gratuity at the above rate.

ii. For computing half months emoluments 26 days will be reckoned as a month and the amount payable will be calculated as follows:

$$\frac{\text{Monthly emoluments eligible for gratuity} \times 15 \text{ days}}{26} \times \text{Number of years of qualifying service}$$

iii. In case where an employee dies while in service or after retirement, but before the employee has received the gratuity, the gratuity shall be paid on the basis of the nomination filed by the employee and accepted by the competent authority. If no such nomination is made it shall be paid to the legal heirs of the employee.

iv. The emoluments for the purpose of this rule shall be pay as defined in Rule 2.xxii and dearness allowance."

20. The 1972 Act has been enacted by the Parliament to provide for a Scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or

incidental thereto. Section 4 deals with payment of gratuity. Provisions of the 1972 Act which are relevant for the present case are Section 4(2), 4(3) and 4(5) which are quoted below:

"4. Payment of gratuity.-

.....

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.--In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

(3) The amount of gratuity payable to an employee shall not exceed ten lakh rupees.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Section 4(5) begins with the words 'nothing in this section

shall affect the right of an employee to receive better terms of gratuity'. Section 4(5) has been thus given an overriding effect over every other part of the Section which is manifestly clear by the words used in the beginning of Section 4(5). As noted above, Section 4(3) puts a ceiling of payment of gratuity to the employees. At present, the said ceiling is Rs.10 lakhs. When Section 4(5) is given an overriding effect over other parts of the Section, there cannot be any two opinion that in a case covered by Section 4(5), Section 4(3) shall stand overridden and ceiling of Rs.10 lakhs shall not be applicable if the employee has a right to receive better terms of gratuity under an award, agreement or contract.

21. The Apex Court had occasion to interpret Section 4(5) of the Act in **D.T.C. Retired Employees Association and Others v. Delhi Transport Corporation** ([2001] SCC 61). In paragraph 18, the following was laid down:

“18.....Sub clause (5) of S.4 is an exception to the main section under which gratuity is payable to the employee. In all welfare legislations, the amount payable to the employees or labourers is fixed at the minimum rate and there will not be any

prohibition for the employer to give better perquisites or amounts than what is fixed under law. The employer, who is more concerned with industrial peace and better employer employee relations, can always give benefit to the employees irrespective of any statutory minimum prescribed under law in respect of such reliefs.....”

It is useful to recall the off quoted dictum of Justice V.R.Krishna Iyer (as His Lordship then was) in **Som Prakash Rekhi v. Union of India** ([1981] 1 SCC 449) where it was held that benignant provision must receive a benignant construction and even if two interpretations are permissible that which further beneficial object should be preferred.

Following are the observations made by His Lordship:

“We live in a welfare State, in a "socialist" republic, under a Constitution with profound concern for the weaker classes including workers (Part IV). Welfare benefits such as pensions, payment of provident fund and gratuity are in fulfilment of the Directive Principles. The payment of gratuity or provident fund should not occasion any deduction from the pension as a "set - off". Otherwise, the solemn statutory provisions ensuring provident fund and gratuity become illusory. Pensions are paid out of regard for past meritorious services. The root of gratuity and the foundation of provident fund are different. Each one is a salutary benefaction statutorily guaranteed independently of the other. Even assuming that by private treaty parties had otherwise agreed to deductions before the coming into force of these beneficial enactments they cannot now be depravatory. It is precisely to guard against such mischief that the non obstante and overriding provisions are engrafted on these statutes.”

22. Submission which has been much pressed by the learned counsel for the appellants is that Rule 14 framed by the Council is not protected by Section 4(5). It is submitted that the said Rules and Regulations cannot be treated as an award, agreement or contract. Whether the Rules and Regulations framed by the Council for governing service conditions of its Scientists and employees can be treated as better terms of gratuity under contract with the employer, is the key question to be answered. If it is held that Rule 14 offer better payment of gratuity receivable by an employee, it shall automatically override the ceiling under Section 4(3).

23. A perusal of Section 4 of the 1972 Act and Rule 14 of the Rules and Regulations of the Council indicate that although gratuity is to be paid at the rate half month's emoluments which the employee drew last for each completed year of service qualifying for gratuity, the maximum ceiling imposed in Section 4(3) is not present in Rule 14. Although Rules 14.1, 14.2 and 14.3 deal in detail about the computation of gratuity, there is no provision

incorporated putting any ceiling on the payment of gratuity. Admittedly, the Rules of the Council were framed with effect from 19.06.2003, i.e., much after the 1972 Act. Had it been intended by the Council to put any ceiling on the payment of gratuity, a provision to that effect ought to have been incorporated in Rule 14 itself. Non-incorporation of any such provision clearly indicate that the Council did not put any ceiling on the payment of gratuity. Section 4(5) uses two phrases; i.e., (i) better terms of gratuity and (ii) under any award, agreement or contract. For applying Section 4(5), both the aforesaid conditions have to be fulfilled.

24. There is sufficient material on record to indicate that calculation of gratuity as per Rule 14 with regard to retiring employees of the Council arrives at a figure more than Rs.10 lakhs. For reference, Ext.P4 payment made by the LIC to Dr C.Renuka of Rs.15,37,218/- who retired as Scientist from KFRI as on 30.09.2011. Similarly, Ext.P5 in W.P(C) No. 2241 of 2012 refers the payment made by LIC for Rs.15,67,132/- to Dr George Mathew who retired from service of the KFRI on 31.10.2011. Thus there is no denying

that calculation under Rule 14 is better terms of gratuity to the Scientists and employees of the Council. Under Section 4(3) if the gratuity is calculated to be payable to the aforesaid two employees, in view of the ceiling under Section 4(3) they would have received the maximum amount of Rs.10 lakhs only. Thus there is no denying that Rule 14 of the Council provides better terms of gratuity to an employee.

25. Now we come to the second aspect of the matter as to whether the above better terms of gratuity can be held to be under a “contract” with employer.

26. Before we proceed to deal with the concept of contract used in Section 4(5) of the 1972 Act, it is relevant to notice the pleadings of the Council as well as State of Kerala. As noted above, counter affidavit has been filed both by the Council and State of Kerala in W.P.(C) No.2241 of 2012. The petitioner in the writ petition has pleaded that payment of gratuity is covered by Rules and Regulations of the State Council which have been made effective with effect from 19.06.2003. Reliance has been placed by the petitioners on Regulation 14 of Section II, Part I of the Rules and

Regulations.

27. In the counter affidavit filed by the Executive Vice President on behalf of KSCSTE it was admitted that payment of Gratuity of the retired employee is regulated under Rule 14 of the General Conditions of Service, Part I Section II of the Rules. It was further pleaded that there was no ceiling for payment of gratuity. Following has been pleaded in paragraphs 5 and 6.

“4. It is humbly submitted that, payment of gratuity to the employees of KSCSTE, who are retiring from service, is regulated vide Relevant Rules and Regulations adopted by KSCSTE. According to this, a retiree will be granted gratuity at the rate of half month's emoluments which the employee drew last, for each completed year of service qualifying for gratuity, provided such employee has rendered not less than five years of service in the Council or any of the Centers under the Council.

5. Payment of Gratuity to the retired employee is regulated under Rule 14 of the General Conditions of Service (Part I Section II) of KSCSTE Rules and Regulations. Enrolment in the Group Gratuity Scheme of the Life Insurance Corporation of India (LIC) is only an internal arrangement of KFRI, the 3rd respondent Institution, to safeguard against any financial crunch, which may affect the Institution during the years when large scale retirements take place. The tie up with LIC is on the condition that, KFRI will regularly remit the premium to the Scheme and LIC will in return disburse the gratuity amount of the retirees as per

the terms and conditions of KSCSTE Rules. The Gratuity claims of Dr.Renuka and of Dr.George Mathew were released, as evident from Exhibits P4 and P5, basing on their entitlement, as per KSCSTE Rules. Details of Scientists to whom gratuity was paid in excess of Rs.10 Lakhs are as shown in Exhibit.P6. They were paid gratuity in excess of Rs.10 Lakhs as the KSCSTE Rules and Regulation prescribe no ceiling for payment of gratuity, and also as, there was no Orders, restricting the payment to Rs.10 Lakhs, during those times.

6. The Order dated 21.5.2010 of the Executive Vice President, KSCSTE stipulates that gratuity be paid without any upper limit, as has been provided in the Council Rules. This order has been issued reckoning the fact that as Council Employees are not paid any pension, imposing a limit to gratuity will cause considerable hardships to them.”

28. In the counter affidavit filed by the State though it was pleaded that the Council and Research Institutes under it are governed by the Rules with effect from 19.06.2003, it was further pleaded that a Rule in par with the State and Central Governments only can be followed in Council and its Research and Development Centres. Following was pleaded in paragraphs 4 and 5.

“4. The Memorandum of Association and bye laws of the KSCSTE were formed as per G.O.(P)No.76/2002/STED dated 06.11.2002. There are six research institutions under KSCSTE, and the petitioners had been working in one of such institutions

which is the 3rd respondent in the above case. The KSCSTE and the research institutions under it have been governed by KSCSTE Rules, with effect from 19.06.2003. Moreover, KSCSTE is running with grant provided by Government of Kerala. Hence Government is the authority in deciding matters relating the service conditions of the employees of KSCSTE and R & D Centres and binding to obey instruction of the State Government.

5. Eventhough no ceiling is imposed on the payment of gratuity of KSCSTE employees, the payment of Gratuity in the council and R&D Centres is in excess of what has been prescribed in the State/Central Government rules. A rule in par with the State/Central Government only can be followed in Council and its R&D Centres. Therefore, the action of council in having granted gratuity without any ceiling is irregular. The KSCSTE has also been continuing with such irregularities in granting benefits to employees by diverting funds allotted to plan activities. It will hamper the plan activities and it will result huge financial implication and increasing recurring expenditure in the non-plan.”

29. It was further pleaded by the State that the Council is fully funded by the State for payment of salary and terminal benefits, hence Government is the authority to decide the matter relating to service conditions of the employees of the Council and R & D Centres. Following was pleaded in paragraph 11:

“11. KSCSTE is fully funded by the State Government for payment of salary and terminal benefits. Hence the Government is the authority in deciding the matters relating the service

condition of the employees of Council and R&D Centres. Therefore, Council cannot issue order overruling the advice of Government in granting gratuity. In addition to this, the administrative expenditure of the council is increasing day by day and this has to be curtailed.”

30. Thus there is no dispute between the parties that Rules and Regulations framed with effect from 19.06.2003 governs the service conditions and retirement benefits which is to be paid to the Scientists and employees of the different institutions under the Council. Whether Rule 14 of the aforesaid Rules can be treated to be terms of gratuity under a contract is the question to be answered.

31. Section 2 of the Indian Contract Act, 1872 defines a contract. Agreement has been defined in Section 2(e). Section 2(e) and 2(h) are as follows:

“2(e) Every promise and every set of promises, forming the consideration for each other, is an agreement.

2(h) An agreement enforceable by law is a contract.”

32. When a person accepts an offer of appointment given by or on behalf of the employer, he accepts the appointment along with all terms and conditions attached to service. The origin of Government service is contractual.

The Apex Court in **Roshanlan Tandon V. Union of India**

[AIR 1967 SC 1889] has observed as follows:

“It is true that the origin of government service is contractual. There is an offer and acceptance in every case. But once appointed to a post or office, the government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties but by statute or statutory rules, which may be framed and altered unilaterally by the Government. In other words, the legal position of a government servant is more one of status than of contract. The hallmark of status is the attachment to a legal relationship of rights and duties imposed by public law and not by mere agreement of the parties. The emoluments of the government servant and his terms of service are governed by statutes or statutory rules, which may be unilaterally altered by the government without the consent of the employee. It is true that article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under article 310. But it is obvious that the relationship between the government and its servants is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than purely contractual relationship voluntarily entered into between the parties. The duties and status are fixed by the law and in the enforcement of these duties, the society has interest.”

33. The service conditions governing the terms of employment of an employee are part of a contract which is accepted by the employee while accepting the appointment. The question as to whether the terms and conditions governing an employee can be treated to be covered within the meaning of contract as used in Section 4(5) of 1972 Act had come for consideration before the Apex Court in a large number of cases. It is relevant to refer to the judgment of the Apex Court in **Beed District Central Co-operative Bank Ltd. v. State of Maharashtra and others** [(2006) 8 SCC 514]. In the above case the respondents were employees of the appellant Co-operative Society which was a registered Co-operative Society under the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as 'the Bank'). The Bank took a policy decision to extend the benefit of better rate of gratuity to a large number of its employees and thus a Scheme was formulated which was linked with the policy of Life Insurance of Corporation of India. The rate of gratuity was to be calculated as one month's salary for every completed year of service with

ceiling limit of 20 months' salary. The employees of the Bank accepted the said scheme and availed the benefits thereof. Subsequently amendments were made to the Scheme putting a ceiling limit of Rs.1.7 lakhs and thereafter Rs. 2.5 lakhs. The ceiling limit under Section 4(3) was also amended from time to time. Under the 1972 Act the gratuity was to be determined at the rate of 15 days' salary for every completed year of service. The ceiling limit was later increased to Rs.3.50 lakhs by 1998 Amendment. The employee accepted the benefit under the Scheme and subsequently a claim was raised that they were entitled to the benefit of both the schemes as also the ceiling limit of Rs.3.50 lakhs and the rate of gratuity should be calculated at the rate of 26 days' instead and in place of 15 days' salary for every completed year of service. In the context of the above case the Apex Court held that the scheme which was framed by the Bank constituted one of the terms of contract of employment. It is useful to quote paragraph 8 of the judgment which is to the following effect:

“8. It is not in dispute that the appellant Bank had its own

gratuity scheme. The said scheme constituted one of the terms of contract of employment between the parties. Under the scheme, employees were entitled to gratuity on the following terms:

(i)	eligibility to receive gratuity	Minimum 5 years of service
(ii)	rate of gratuity	26 days' wages for every completed year of service
(iii)	the maximum amount of gratuity	Rs.2,50,000/-

34. It was further held by the Apex Court in the above case that when two views are possible, having regard to the purpose of the Act seeks to achieve being a social welfare legislation, it may be construed in favour of the workman.

35. Further in **Allahabad Bank and another v. All India Allahabad Bank Retired Employees Association** [2010 KHC 6062] again the Apex Court laid down that remedial statutes should receive a liberal construction. Following was laid down in paragraph 11 (relevant portion):

“11. Remedial statutes, in contra distinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due

regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country. ”

36. The judgment of the Apex Court on which the learned Government Pleader has placed reliance was the judgment reported in **Y.K. Singla v. Punjab National Bank and others** [(2013) 3 SCC 472]. In the above case the appellant was an officer of the Bank who was prosecuted under Section 120-B IPC and Section 5(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. During the period the appellant was holding the post of Chief Manager and was facing prosecution, he retired on 31.10.1996. Subsequently on 31.10.2009 the appellant was acquitted from the charges. On account of pendency of criminal proceedings, his gratuity, leave encashment and other benefits were withheld. The payments were received by the appellant with delay. The prayer for payment of interest having been denied by the Bank, the writ petition was filed by the appellant before the High Court which writ petition was allowed by the learned Single Judge. Later the

appeal filed by the Bank was partly allowed. The Division Bench held that the appellant was not entitled for interest for any delayed payment of gratuity. The appellant challenged the judgment of the Division Bench before the Apex Court. Referring to Section 4 of the 1972 Act following was laid down by the Apex Court in paragraphs 15 and 16(relevant portions):

“15. xx xx xxxxx xx xx

It is not a matter of dispute, that the appellant was entitled to gratuity when he retired on attaining the age of superannuation on 31-10-1996. The quantification of the appellant's gratuity by PNB is not in dispute. As such, sub-sections (1) to (4) of Section 4 of the Gratuity Act are clearly not relevant to the present controversy. Only sub-section (5) of Section 4 is relevant insofar as the present case is concerned. Likewise, since the appellant has not been found to be at any fault, sub-section (6) of Section 4 is also not attracted in this case.

16. Sub-section (5) of Section 4 of the Gratuity Act permits an employee to be regulated for the purpose of gratuity under an alternative provision/arrangement (award or agreement or contract), other than the Gratuity Act. In such an eventuality, sub-section (5) aforesaid assures the employee concerned, “.... to receive better terms of gratuity under any award or agreement or contract with the employer”. Since the appellant's claim for gratuity is regulated under the 1995 Regulations, it is evident that his claim for gratuity is liable to be determined by ensuring his right to better terms than those contemplated under the Gratuity

Act. In the instant process of consideration, the aforesaid conclusion, namely, that an employee who receives gratuity under a provision other than the Gratuity Act, would be entitled to better terms of gratuity, will constitute one of the foundational basis of determination. Having examined Section 4 of the Gratuity Act, we may unhesitatingly record that none of the other sub-sections of Section 4 of the Gratuity Act, as well as the other provisions of the Gratuity act, have the effect of negating the conclusion drawn hereinabove.”

37. The Apex Court held that Section 4(5) of the Act permits the employee to be regulated for the purpose of gratuity under an alternative provision/arrangement, other than the Gratuity Act.

38. Learned Government Pleader has referred to paragraph 22 of the judgment where the Apex Court had occasion to consider Section 14 of the 1972 Act. Section 14 of the Act gives an overriding effect to the 1972 Act over any other enactment or any instrument or contract. It is further relevant to note that while considering Section 14, the Apex Court has also laid down that on the basis of Section 4 of the Gratuity Act an employee has right to make a choice to select other than Gratuity Act for drawing the benefit of gratuity. Paragraphs 22 and 23 read as follows:

“22. In order to determine which of the two provisions (the Gratuity Act of the 1995 Regulations) would be applicable for determining the claim of the appellant, it is also essential to refer to Section 14 of the Gratuity Act, which is being extracted hereunder:

“14. Act to override other enactments, etc.-*The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act.*”

A perusal of Section 14 leaves no room for any doubt that a superior status has been vested in the provisions of the Gratuity Act vis-a-vis any other enactment (including any other instrument or contract) inconsistent therewith. Therefore, insofar as the entitlement of an employee to gratuity is concerned, it is apparent that in cases where gratuity of an employee is not regulated under the provisions of the Gratuity Act, the legislature having vested superiority to the provisions of the Gratuity Act over all other provisions/enactments (including any instrument or contract having the force of law), the provisions of the Gratuity Act cannot be ignored. The term “instrument” and the phrase “instrument or contract having the force of law” shall most definitely be deemed to include the 1995 Regulations, which regulate the payment of gratuity to the appellant.

23. Based on the conclusions drawn hereinabove, we shall endeavour to determine the present controversy. First and foremost, we have concluded on the basis of Section 4 of the Gratuity Act that an employee has the right to make a choice of being governed by some alternative provision/instrument other than the Gratuity Act, for drawing the benefit of gratuity. If an employee makes such a choice, he is provided with a statutory protection, namely, that the employee concerned would be

entitled to receive better terms of gratuity under the said provision/instrument, in comparison to his entitlement under the Gratuity Act. This protection has been provided through Section 4 (5) of the Gratuity Act.”

39. In spite of Section 14 the Apex Court has specifically stated that the right of an employee is given under Section 4(5) of the Act and the said right shall not be overridden by Section 14.

40. There is one more reason due to which the right given under Section 4(5) cannot be taken away by Section 14. Section 4(5) provides that nothing in the section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer. Thus better terms of gratuity under the award or agreement or contract have been saved and the employee has given right to opt for that. Section 14 gives an overriding effect over other enactment. Section 14 shall have overriding effect over any enactment other than the 1972 Act. Thus Section 14 overrides as follows: (1) Anything inconsistent therewith contained in any enactment other than this Act or (2) in any instrument or contract having effect by

virtue of any enactment other than the 1972 Act. Thus what is overridden is 'any other enactment or any other contract as in any other enactment'. Thus contract which is saved under Section 4(5) is clearly not affected by Section 14. Thus the reliance by learned Government Pleader on paragraphs 22 of the above judgment does not lay any support to his submissions.

41. From the aforesaid decision it is clear that the Apex Court has treated that the terms and conditions of employment i.e., any scheme regulating the payment of gratuity is part of the terms and conditions framed by the employer and as part of contract within the meaning of Section 4(5). We thus conclude that the word 'contract' used in Section 4(5) is wide enough to include service conditions regulating terms of gratuity to which the employee is entitled to receive.

42. Learned counsel for the parties have referred to various decisions of this Court on the subject which also needs consideration. The judgment of learned Single Judge in **Retnavalli v. Ambalapadu Service Co-operative Bank Ltd**

[2005 (3) KLT 320] has been referred to by Sri.N.Nandakumara Menon, learned Senior Counsel. The question which came for consideration in the said case has been noticed in paragraph 1 and it is useful to quote paragraph 1 of the judgment which is to the following effect :

“1. A very important question affecting the employees of the Cooperative Societies across the State of Kerala arises in this case. The question is whether the gratuity payable to retired employees or legal heirs of deceased employees of Cooperative Societies should be restricted to the maximum prescribed under S.4(3) of the Payment of Gratuity Act, 1972, (for short 'the Act'), R.59 of the Kerala Cooperative Societies Rules, 1969 (hereinafter referred to as 'the Rules') and the bye laws framed under the said R.59, even in cases where the Societies have entered into arrangement with the L.I.C. to have their liability for payment of gratuity to its employees insured as per the "Employees Group Gratuity Life Assurance Scheme" of the L.I.C, as per which more amounts than the statutory maximum payable as per S.4(3) of the Payment of Gratuity Act, R.59 and bye laws of the society are payable to the employees.”

43. Considering Section 4(5) learned Single Judge has further stated that there is nothing in the 1972 Act prohibiting the prescription of a maximum amount of gratuity payable by an employer, by any statutory rule or bye law framed by a Society. Following was observed by learned Single Judge in paragraph 6 (relevant portion):

“6.I shall consider questions (a) and (b) together. S.4(5) of the Act is a saving clause whereby the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer is saved, notwithstanding the maximum limit prescribed by S.4 (3) of the Act. S.4(5) comes into operation only if there is an award, contract or agreement entitling the employee to get better terms of gratuity. In fact, as far as the limit of gratuity is concerned, only if the maximum fixed by the employer is higher than the statutory maximum prescribed under S.4(3), it becomes better terms of gratuity. In the absence of the employer fixing a maximum higher than the statutory maximum, S.4(5) does not come into play at all with regard to fixation of higher maximum.”

44. In the above case the learned Single Judge held that there was nothing in Rule 59 which was framed under the Co-operative Society Act which provides any limit to the gratuity payable to employees of Co-operative Society. It was held that the entire amount paid by the Life Insurance Corporation pursuant to Ext.P1 policy was liable to be paid to the employees. Following was held in paragraph 16:

“16. The long and short of the above discussion is that payment of amounts by the LIC out of the Trust Fund as per Ext.P1 policy to the employees of the Society or their legal heirs does not in any way violate either R.59 of the Kerala Co-operative Societies Rules, 1969 or the bye-laws of the Society, if any. The amount payable as per Ext.P1 policy is the amount belonging to the employee and the Society has no legal or moral right to withhold any part of it, citing R.59, bye-laws of the Society or the limit prescribed by the Payment of Gratuity Act, 1972. The result of these findings is that the 1st respondent-Society is bound to pass on the

entire amount paid by the LIC pursuant to Ext.P1, in respect of the gratuity liability of the Society towards each employee, taken over by the LIC in full, without withholding any amount therefrom, even if it is in excess of the amount prescribed as per R.59 or the bye-laws of the Society.”

45. Another Division Bench judgment relied on by Sri.N.Nandakumara Menon is **Nedupuzha Service Co-operative Bank Ltd. v. Rugmini** [2011 (3) KLT 134]. In the above case the Division Bench had occasion to consider Section 4(5) of 1972 Act. In the above case two batches of cases were decided by the Division Bench. The Bank had made an arrangement from LIC by taking group gratuity cum life assurance policy for payment of gratuity towards its employees. The LIC, after retirement of the employees, made certain payment and the Bank paid the amount only to the limit up to the ceiling prescribed in 1972 Act and withheld the rest of the amount. Learned Single Judge directed the appellant to pass the entire benefit received from the LIC in the account of the employee. One batch of writ petition was challenging the said order. The Division Bench upheld the above judgment of learned Single Judge and W.A. No.197 of 2010 filed against the judgment was dismissed. It is useful to

quote paragraph 5 of the judgment:

“5. We do not find any justification for the appellant Bank to contend that the Policy benefit should go to the Bank. As already stated by us, LIC's Group Insurance Policy is squarely covered by S.4(5) of the Act, which excludes statutory liability by which the employer and employee can have separate arrangement for gratuity if the terms of the same are better to the employees. We have already noticed that the terms of the LIC's Group Gratuity Scheme under the Policy offered by them are advantageous to the employees by virtue of the life insurance coverage and the guarantee even in the event of liquidation of the Society. However, we do not think the employers can claim the benefit of the Group Gratuity Policy taken by them for the benefit of the employees. The appellant Bank is only a trustee, which made arrangement with the LIC by taking the policy and making payment of premium to provide gratuity and other benefits to its' employees. All the benefits under the Policy are to the account of the employees and nothing is retained by the employer, which by making payment of the premium, discharges its annual liability for gratuity to the employees covered under the Scheme. We therefore uphold the judgment of the learned Single Judge directing the appellant to pass on the benefits received from the LIC to the respondent employees. W.A. No.197/2010 is accordingly dismissed directing the appellant Bank to forthwith pass on the differential amount received from the LIC towards the Group Gratuity Scheme to the respondent employees.”

46. The other batch of writ appeals was a case where the appellant Bank has passed the entire benefit received under the policies to the employees. Learned Single Judge in the writ petition however held that the employees are

entitled for gratuity in terms of the Act, i.e. 15 days' wages for each year completed in service which exceeded the statutory limit of Rs.3.5 lakhs provided under Section 4(3) of the Act. The Division Bench held that the group gratuity policies taken by the Bank with the LIC Limited, the gratuity liability is to the maximum amount of Rs.3.5 lakhs and the LIC had collected premium from the appellant for the maximum amount. Hence the claim of gratuity in excess of limit could not have been accepted. Due to the aforesaid reason the Division Bench set aside the above judgment of learned Single Judge holding that the employees were not entitled to gratuity over and above the statutory limit which was covered by the policy. Following was held in paragraph 6:

“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.”

47. The Division Bench thus in the above case held that the employees could not have been granted any amount in excess to what has been received by the LIC and in the event the policy taken from LIC was limited to a maximum limit, the said limit could not have been crossed. When the LIC policy taken by the Bank provides for a ceiling limit, the benefit under the Scheme provided by the employer cannot be said to be a better term for gratuity. Due to the above fact the order directing payment, by learned Single Judge, in

excess of the ceiling limit was set aside.

48. Much reliance has been placed by learned counsel for the appellant on a Division Bench judgment of this Court reported in **The Travancore Cements Employees Co-operative Bank Ltd. v. Ramachandran Nair** [2014 (1) KLT 889]. In the above case the respondent was working as Secretary of the appellant Bank who retired on 31.05.2007. LIC issued a cheque of Rs.5,36,567/- to the Bank for payment of gratuity. However, the Bank disbursed only Rs.3.5 lakhs. The writ petition was filed by the respondent challenging the withholding of payment of gratuity. The writ petition was allowed by learned Single Judge by relying on **Retnavalli's** case (supra).

49. In the above case a resolution was passed on 23.07.2010 by the Managing Committee to withdraw the amount from the LIC limiting to a maximum gratuity payable limiting to Rs.3.5 lakhs. Against the judgment of learned Single Judge directing payment of balance amount, writ appeal was filed by the Bank. The Division Bench in the said case has noticed that the LIC has received contribution from

the appellant Bank limiting the maximum gratuity payable to Rs.3.50 lakhs which fact was noticed in paragraph 11 of the judgment which is quoted as below:

“11. In order to meet the gratuity liability of the employees, the appellant - Bank had enrolled in a contribution linked Group Gratuity Cash Accumulation Scheme of the LIC. As per the statement of accounts as on 11/10/2006, issued by the LIC dated 22/09/2006, produced as Annexure - I along with the review petition, the LIC received contribution from the appellant - Bank limiting the maximum gratuity payable to Rs. 3.5 Lakhs, which was the maximum limit prescribed under sub-section (3) of S.4 of the Payment of Gratuity Act, as it stood during the relevant time. In the counter - affidavit filed in RP No. 90/2008, the 1st respondent has admitted that Annexure - I statement of account is the annual statement issued by the LIC to the appellant - Bank giving the calculations on the basis of which the annual premium (contribution) to be paid is demanded. In Annexure - I statement of account, the amount of gratuity lying to the credit of the 1st respondent is shown as Rs. 3.5 Lakhs only. Moreover, in the Cost and Benefit Schedule dated 22/09/2006 issued by the LIC, produced as Ext. R1(b) along with IA No. 126/2014 in WA No. 1757/2009, the maximum gratuity in respect of the policy is limited to Rs. 3.5 Lakhs and the annual renewal contribution payable as on 11/10/2006 has been calculated accordingly. In addition to this, the LIC in its letter dated 24/02/2014, produced as Ext. R1(a) along with IA No. 126/2014 in WA No. 1757/209, has stated in categorical terms that, the gratuity limit of the policy is Rs. 3.5 Lakhs, as provided in the Cost and Benefit Schedule, which forms part of the policy document.”

50. Noticing the aforesaid the Division Bench has allowed the appeal holding that the group gratuity scheme with the LIC Limited, the gratuity amount receivable to an employee is limited to a maximum of Rs.3.50 lakhs. It was held that in the absence of contract or agreement to receive better terms of gratuity, the 1st respondent was not legally entitled to gratuity over and above the statutory limit of Rs.3.50 lakhs. Following was held in paragraph 18:

“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 LIC 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 LIC 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 14/05/2007, the Bank decided to request the LIC 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 LIC 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 LIC 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.”

51. The above Division Bench judgment was thus based on its own facts where the arrangement with the LIC by the Bank was limited to payment of gratuity up to the maximum of Rs.3.50 lakhs. Thus in the above circumstances the claim of employee to get the gratuity in excess of the ceiling limit was denied.

52. Smt.Sumathy Dandapani, learned Senior Advocate appearing for writ petitioners has placed reliance on a Division Bench judgment of this Court in W.A. No.1822 of 2010 decided on 05.06.2015 (**LIC of India v. K.P.Varghese**). In the aforesaid case Sri.K.P. Varghese was an employee of the Bank who retired on 30.04.2007. A gratuity of Rs.3.50 lakhs was paid by the LIC to the Bank. The employee objected to the payment of gratuity only up to

Rs.3.50 lakhs. A complaint was filed before the Ombudsman. The Ombudsman allowed the complaint against which the Writ petition was filed by the Corporation. The Division Bench had occasion to consider the terms of master policy which was taken by the Bank for payment of gratuity. It was noticed by the Division Bench that neither in the master policy nor in the rules there was any clause which provided for any limit over the maximum amount payable as gratuity, except the limit of a maximum of 20 months' salary. It is useful to quote paragraph 14 of the judgment which is to the following effect:

“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 or death, as the case may be, for each year of service subject to a maximum of 20 months salary.”

53. After noticing the aforesaid judgment the Division Bench had referred to the earlier Division Bench judgment of **Travancore Cements' case** (supra) and **Retnavalli's case** (supra) and held that the Division Bench judgment in Travancore Cements' case was distinguishable since there was a limit in the policy taken in that case. In paragraph 20 of the judgment the Division Bench has laid down as follows:

“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. ”

54. Thus in cases of payment of gratuity to the employees of the Co-operative Bank as noted above if under the Scheme/policy there is no ceiling limit provided for gratuity, the courts have held that employees are entitled to receive the amount without any limit as per the policy. However, it was further held that if the policy is taken providing a ceiling limit as provided under Section 4(3), the employees cannot claim any amount over and above.

55. In the cases before us the payment of gratuity is regulated by Rule 14 as quoted above. Rule 14 does not contain any provision by which any ceiling limit to the payment of gratuity is provided, as provided under Section 4 (3) of 1972 Act. With regard to employees of Kerala Forest Research Institute there was an internal arrangement with LIC for payment of gratuity and from the materials on record it is proved that LIC has been making payment of gratuity to the employees without any ceiling limit as provided under Section 4(3). We have already noticed that payment of

gratuity of Rs.15 lakhs to Dr C.Renuka and Dr George Mathew in W.P.(C) No.25884 of 2011 was paid in the year 2011 by the cheque issued by LIC. We thus conclude that Clause 14 of the rules and regulations framed by the Council provides for better terms of gratuity under the contract of service with the employer and payment of gratuity to writ petitioners was fully protected by Section 4(5) of the Act and the ceiling of Rs.10 lakhs as on date as provided under Section 4(3) was not applicable in payment of gratuity to the writ petitioners. The learned Single Judge did not commit any error in directing payment of gratuity to the petitioners disregarding the ceiling as prescribed in Section 4(5) of the Act.

56. One more issue need to be considered is as to whether the State Government had jurisdiction to direct the Council not to pay gratuity to employees retiring, in excess to Rs.10 lakhs which is provided under Section 4(3).

57. As noted above, the Council was constituted as a registered Society under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955

which society came into existence on 21.11.2002. The Society is an autonomous body composition of which is provided in Rule 3.1 of the Rules. Rule 3.1 of the Rules has already been extracted above.

58. A perusal of Rule 3.1. indicates that the State Council consists of Chief Minister as President, 7 Ministers of different Departments as Vice President and various high officers of the Government including the Vice Chancellor of Cochin University of Science and Technology and Kerala Agricultural University are members. The Society has been constituted to manage six Research Institutes which Research Institutes are engaged in scientific research and development. Copy of the Rules have been placed before us by the counsel for the appellants. The Rules framed by the Council are comprehensive which govern all aspects of the service conditions recruitment, promotion, disciplinary action, conduct apart from Rules and Regulations to regulate the constitution of Council, meetings of the Council, functioning of the Council etc.

59. Rule 19.1 provides for amendment of rules and

regulations. Rules, 19 and 19.1 read as under:

“19. Amendment of Memorandum of Association and Rules and Regulations.

19.1 Whenever it shall appear to the Executive Committee of the State Council that it is advisable to alter, extend or abridge the Memorandum of Association for such purposes as are mentioned in the Memorandum of Association, the Executive Committee may submit the proposal to the member of the State Council in a written or printed report, and may convene a special general meeting for the consideration thereof according to the rules and regulations. No such proposal shall be deemed to have been approved unless such reports have been delivered by the hand or sent by registered by post to every member of the State Council 21 days previous to the date of the special general meeting convened at the instance of the Executive Committee for the consideration thereof, and unless proposal shall have been agreed to by the votes cast in favour of the proposal by the members entitled to do so, and such votes are not less than three times the number of votes if any, cast against the resolution by the members so entitled and voting and attended by not less than half the number of members of the State Council.”

60. We have gone through the Rules placed before us. We do not find any express Rule empowering the State Government to give any direction to the Council on service matters of any employee or Officer under the Council and Institutes. The learned Single Judge has rightly held that

there is no express rule empowering the State Government to issue any direction to the Council. When the rules cover the entire field of service conditions etc., whether the State by any direction can alter the implementation of rules, the answer is officially no. The Rules which govern the autonomous body do not contemplate any such direction by the State Government. When the Rules itself do not contemplate any such direction, it was not open for the State to direct the Council not to pay the gratuity in excess of Rs.10 lakhs when no such ceiling limit is provided in the Rules governing the payment of gratuity. The learned Single Judge has rightly observed that till the relevant Rule i.e., Rule 14 is not amended in accordance with the procedure prescribed in the Rules, no such restriction can be imposed by the State Government in payment of gratuity to the retiring employees of the Council.

61. In view of the foregoing discussions we are of the view that no grounds have been made out to interfere with the judgment of learned Single Judge by which the learned

Single Judge has allowed the writ petitions. We do not find any merit in any of the submission raised by learned counsel for the appellants.

All the Writ Appeals are dismissed.

Parties shall bear their own costs.

**ASHOK BHUSHAN,
CHIEF JUSTICE.**

**A.M. SHAFFIQUE,
JUDGE.**