

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

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

WEDNESDAY, THE 25TH DAY OF NOVEMBER 2015/4TH AGRAHAYANA, 1937

WA.No. 105 of 2015 ()

WP(C) 35830/2010 of THIS HONOURABLE COURT

APPELLANTS/PETITIONERS 1 AND 3:-:

- 1. PAUL FRANCIS AMBOOKAN
P.O.POYYA, TRICHUR (DIST), KERALA STATE-680 733**
- 2. K. RAJEEVAN,'INDEEVARAM',
THADAMBATTUTHAZHAM, KARAPARAMBA ROAD,
KOZHIKODE DISTRICT, KERALA STATE-673 000**

**BY ADVS.SRI.S.PARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L.ANNAPOORNA**

RESPONDENTS/RESPONDENTS& 2ND PETITIONER :

- 1. THE STATE BANK OF INDIA
LOCAL HEAD OFFICE, S.S.KOVIL ROAD
THIRUVANANTHAPURAM-695 001
REPRESENTED BY ITS CHIEF GENERAL MANAGER**
- 2. THE STATE BANK OF INDIA,
CORPORATE CENTRE, MADAME CAMA ROAD,
REPRESENTED BY ITS DEPUTY MANAGING DIRECTOR,
AND CORPORATE DEVELOPMENT OFFICER,
(GRATUITY) MUMBAI**
- 3. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT
CENTRAL SECRETARIAT, NEW DELHI**

WA.No. 105 of 2015 ()

**4. GOVERNMENT OF INDIA, REPRESENTED BY ITS SECRETARY,
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
DEPARTMENT OF PENSION & PENSIONERS' WELFARE
LOK NAYAK BHAVAN, NEW DELHI-110003**

**5. SANKARANARAYANAN V.K., 40/7207, GOPALAPRABHU ROAD,
ERNAKULAM (DIST) KERALA STATE -682035**

**R1 & R2 BY ADV. SRI.GEORGE THOMAS(MEVADA), SC, SBI
R3 & R4 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL**

**THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 25-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

bp

ASHOK BHUSHAN, CJ & A.M.SHAFFIQUE, J

W.A. No. 105 of 2015

Dated this the 25th day of November, 2015

JUDGMENT

Ashok Bhushan, CJ.

Heard both the sides. This writ appeal has been filed against the judgment dated 19.11.2014 in Writ Petition No.35830 of 2010.

2. This writ petition has been dismissed by the learned Single Judge. Aggrieved by the judgment, petitioners have come up in the writ appeal. Petitioners are retired employees of State Bank of India who are entitled for payment of Gratuity under the payment of Gratuity Act, 1972. Under section 4 sub section (3) the ceiling limit for gratuity is prescribed from time to time. The ceiling limit prior to amendment made by the Payment of Gratuity Act, 2010 was Rupees 3.5 Lakhs. By the aforesaid amendment, Act 15 of 2010, the provisions of section 4 of subsection (3) were amended. Section 1 and 2 of the Amendment Act provides as follows :

“An Act further to amend the Payment of Gratuity Act, 1972.

Be it enacted by Parliament in the sixty-first year of the Republic of India as follows:-

1.(1) This Act may be called the Payment of Gratuity (Amendment) Act, 2010.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 4 of the Payment of Gratuity Act, 1972, in sub-section(3), for the words "three lakhs and fifty thousand rupees", the words "ten lakh rupees" shall be substituted."

Subsequently, the Central Government in exercise of power conferred under sub-section (2) of section 1 of the Amendment Act, 2010 appoint 24.5.2010 as the date on which the Act came into force. The petitioners after the aforesaid amendment, had came up in the writ petition praying for the following reliefs :

- “(a) Declare that the appointment of May 24, 2010 as the date on which the payment of Gratuity (Amendment) Act, 2010 is to come into force is arbitrary and illegal.
- (b) Issue a Writ of Mandamus or any other appropriate writ, order or direction to respondents to grant the benefit of enhanced Gratuity of Rs.10 lakhs to the petitioners with effect from 1.1.2006.
- (c) Issue a writ of mandamus or any other appropriate writ, order or direction to the Government of India to issue necessary directions to the State Bank of India to pay increased Gratuity of Rs.10 lakhs to its employees as volunteered by the State Bank of India in their representation, with effect from January 1, 2006.
- (d) Direct the State Bank of India to disburse to it is employees Gratuity as per section 4(3) of the Act, as amended by payment of gratuity (Amendment) Act, 2010 with retrospective effect from January 1, 2006.”

3. The basic challenge of the petitioners in the writ petition is that the date 24.5.2010, notified by the Central Government as the appointed day for enforcing the Act, 15 of

2010 is arbitrary and illegal. The petitioners have further prayed for a mandamus to be issued directing the respondents to enhance the gratuity of Rs.10 lakhs to the petitioners with effect from 1.1.2006.

4. A perusal of the Amendment Act 15 of 2010 clearly indicate that the amendment has to come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. 24.5.2010 was the date appointed by the Central Government by issuing notification, which was published on 24.5.2010. The Act as well as the notification does not indicate that the Act was to be given effect with any retrospective date.

5. Learned Single Judge upholding the aforesaid amendment Act and the date 24.5.2010, dismissed the writ petition. The learned Single Judge, in the writ petition, has referred to an earlier judgment of this Court reported in **Shitla Sharan Srivastava and Others v. Government of India and Others** [AIR 2001 SC 2540]. In the aforesaid case, the amendment effected in 1998 to the Payment of Gratuity Act came up for consideration, where also, it was claimed that the benefit of the enhancement of the ceiling limit may be given

with an earlier date. It is useful to refer to paragraph 6 of the aforesaid judgment, which is to the following effect:

“6. It is not disputed that the claim made in these petitions is in respect of the employees who retired prior to 24-09-1997. The respondent-Bank has its own service rules/schemes governing its employees. The 5th Pay Commission recommendations are in relation to the Central Government employees. A mere speech made by the Finance Minister without taking further steps to give the benefit of enhanced ceiling limit of gratuity amount specifically in the case of the respondent-Bank is of no help to the petitioners. The service rules governing employees of RBI/IDBI and Central Government employees are different. The Act was amended in 1998 fixing the ceiling of payment of gratuity at Rs. 3.5 lakhs effective from 24-09-1997. Assuming that the respondent-Bank had made profit, the claims of the petitioners cannot be allowed unless there is a sustainable foundation for such a claim. The respondent- Bank has pointed out that the officers of the Bank are governed by the pension rules and are paid gratuity, only in terms of the Act while the compassionate gratuity is a separate scheme to provide succour to the bereaved families of the officers who die in harness and the effective date of revision is fixed by the Executive Committee of the Central Board at Rs. 1 lakh with effect from 1-1-1986, Rs. 2.5 lakhs with effect from 1-4-1995 and Rs. 3.5 lakhs with effect from 1-1-1996. The compassionate gratuity, as stated above, is different from the gratuity amount payable under the Act. Office memorandum dated 27-10-1997 relied upon by the petitioners categorically provides that those orders apply to Central Government employees governed by CCS (Pension) Rules, 1972. Further, the 5th Pay Commission recommendations are applicable to Central Government employees only and are not made applicable to the employees of the respondent-Bank. Thus, looking to the various aspects, we conclude that these petitions are devoid of merits, hence they are dismissed. No order as to costs”

6. Learned counsel for the appellant submitted that the Bank earlier has written to the Government for permission to give the benefit from an earlier date. The mere fact that request was made for giving the benefit from earlier date which was never acceded to, cannot enable the petitioner to claim any benefit from 1.1.2006.

7. Counter affidavit has been filed by the Bank supporting the amendment as well as the notification dated 24.5.2010. The Bank has never accepted payment of gratuity as enhanced by Amendment Act 15 of 2010 by any anterior date. We are of the view that no case is made out to issue mandamus or declare the date 24.5.2010 as arbitrary or irrational. We are of the view that learned Single Judge has not committed any error in dismissing the writ petition.

The appeal is dismissed.

Sd/-
ASHOK BHUSHAN
CHIEF JUSTICE

Sd/-
A.M.SHAFFIQUE,
JUDGE