

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

&

THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH

TUESDAY, THE 4TH DAY OF AUGUST 2015/13TH SRAVANA, 1937

WA.No. 1658 of 2015 () IN WP(C).36190/2009

AGAINST THE ORDER/JUDGMENT IN WP(C) 36190/2009 of HIGH COURT OF KERALA
DATED 15.12.2009

APPELLANT(S)/APPELLANTS/RESPONDENT:

KERALA STATE ELECTRICITY BOARD LTD.
REPRESENTED BY ITS SECRETARY, VYDYUTHY BHAVAN, PATTOM
THIRUVANANTHAPURAM-695004.

BY ADV. SRI.PULIKOOL ABUBACKER, SC, KSEB

RESPONDENT(S)/RESPONDENTS/PETITIONERS:

1. M.LEKSHMIKUTTY
BEENANANDA HOUSE, PANGARAPILLY P.O.
MULANTHURUTHI (VIA), ERNAKULAM (DT), PIN-682314.

2. THE REGIONAL JOINT LABOUR COMMISSIONER
ERNAKULAM, KAKKANADU, KOCHI
PIN-682030

3. THE DISTRICT LABOUR OFFICER
(THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT
1972), KAKKANADU, ERNAKULAM
PIN-682030.

R1 BY SRI.BIJU BALAKRISHNAN
GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 04-08-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**P.R. RAMACHANDRA MENON &
BABU MATHEW P. JOSEPH JJ**

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C.M. Application No. 878 of 2015

and

W.A. No. 1658 of 2015

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Dated, this the 4th day of August, 2015

JUDGMENT

Ramachandra Menon J.

C.M. Application is filed to condone the delay of 2003 days in filing the writ appeal. Explanation offered from the part of the appellant/Electricity Board in the application to condone the delay as contained in paragraph 2 is as follows :

"2. The above writ appeal is filed challenging the judgment in W.P.(C) No.36190/2009 dated 15.12.2009. The counsel appearing for the above matter has obtained the copy application on behalf of KSEB, but the same was misplaced. Immediately on knowing it, a fresh application was submitted on 04.07.2015 and the copy was obtained on 08/07/2015. Since there is short of time, the Board was not able to file the appeal.

2. Heard both the sides.

3. We find that the reason stated in the affidavit filed in support of the application is not liable to be treated as an explanation, much less anything satisfactory. There is inordinate delay in filing appeal.

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Since the explanation is not at all satisfactory, application to condone the delay is not liable to be entertained.

4. With regard to the merit as well, it is seen from the judgment under challenge that the dispute was with regard to the eligibility of the writ petitioner to get enhanced gratuity in terms of the Payment of Gratuity Act, 1972. Gratuity payable to the employees of the Board was worked out and given in terms of the Government Service Rules. But subsequently, a Division Bench of this Court made it clear that employees of the Electricity Board are entitled to get gratuity under the Payment of Gratuity Act, 1972. It is stated that the matter has been taken up by the Board before the Apex Court, where the issue is pending. It was considering the factual position as above, that the matter was disposed of on 15.12.2009. The operative portion of the judgment is as follows :

"If the appeal filed before the Supreme Court still remains undisposed of after four months from today, the respondents 1 and 3 shall disburse the amount in deposit, on the petitioners executing bonds with two serving employees of the Board as sureties for due repayment of the amounts if the Board ultimately succeeds in the appeal before the Supreme Court. If the petitioners are unable to find serving employees as

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sureties, the amounts need to be disbursed only after the Supreme Court finally dispose of the appeal. But in that event the petitioners would be entitled to 10% interest on the amount in deposit.

This Court makes it clear that the judgment passed by the learned single Judge will be subject to the outcome of the matter pending before the Apex Court and that the liability to interest will arise only if there is any default on the part of the Board.

Petition to condone the delay stands dismissed and as a natural consequence, the appeal as well.

Sd/-

**P. R. RAMACHANDRA MENON,
JUDGE.**

sd/-

**BABU MATHEW P. JOSEPH,
JUDGE.**

kmd