

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

THURSDAY, THE 17TH DAY OF DECEMBER 2015/26TH AGRAHAYANA, 1937

WP(C).No. 10247 of 2006 (T)

PETITIONERS:

1. K.GOPINATHA PILLAI,
RETIRED SUPERVISOR, OIL PALM INDIA LTD.
RESIDING AT RATHEESH BHAVAN, MURANADU P.O., EZHUKONE
KOLLAM DISTRICT.
2. Y.BABYKUTTY,
RETIRED FIELD ASSISTANT, VADAKKUMKARA PUTHEN VEEDU
AYALARA P.O., KOLLAM DISTRICT.
3. K.RAVEENDRAN, RETIRED FIELD OFFICER,
KOIPPALLY PUTHEN VEEDU, CHITTAKODE, MURANADU P.O.
EZHUKONE, KOLLAM DISTRICT.
4. T.K.BALACHANDRAN NAIR,
RETIRED DRAFTS MAN-I, DEVI VILASAM, KARINGANOOR P.O.
KOTTARAKKARA.
5. K.T.VARGHESE, RETIRED DRAFTSMAN- I,
KADAMARATHIN VILAYIL, INJAPPARA JUNCTION, KOODAL P.O.
PATHANAMTHITTA DISTRICT.
6. R.SUKUMARAN, RETIRED CLERK,
POYKAYIL VEEDU, MANNUVAYAL, YEROOR P.O.
ANCHAL.
7. K.VISWANATHA PILLAI, RETIRED DRIVER,
ANJANEYAM, K.S.PURAM, KARUNAGAPPALLY.
8. KRITHYAVSAN.S. RETIRED SUPERVISOR,
CHIRAKKARA VEEDU, BHARATHIPURAM, KOLLAM DISTRICT.
9. G.BHASKARAN NAIR,
RETIRED ASSISTANT MANAGER, KARTHIKA, TC 41/2287
MANACAUDU., THIRUVANANTHAPURAM - 9.
10. P.NANU, RETIRED MESSENGER,
ANANDA BHAVANAM, VILAKKUPARA P.O., KOLLAM DISTRICT.

11. C.THANKAPPAN, RETIRED WATCHER,
KALLUVETTUKUZHIL VEEDU, BHARATHIPURAM P.O., KOLLAM.
12. S.BALAKRISHNAN NAIR,
RETIRED BOILER ATTENDANT, SREEJA NIVAS, SREEKARIYAM P.O.
THIRUVANANTHAPURAM 17.

BY ADV. SRI.MANOJ RAMASWAMY

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY TO GOVERNMENT,
AGRICULTURE DEPARTMENT
SECRETARIAT, THIRUVANANTHAPURAM.
2. THE MANAGING DIRECTOR,
OIL PALM INDIA LIMITED, KOTTAYAM.

BY ADV. SRI.E.K.NANDAKUMAR
SRI.T.R.HARIKUMAR, SC, KSHB
BY GOVERNMENT PLEADER SRI. T.R. RAJESH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 17-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS' EXHIBITS:-

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|-----------|---|--|
| EXT.P1 | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 1ST PETITIONER. |
| EXT.P1(A) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 2ND PETITIONER. |
| EXT.P1(B) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 3RD PETITIONER. |
| EXT.P1(C) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 5TH PETITIONER. |
| EXT.P1(D) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 6TH PETITIONER. |
| EXT.P1(E) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 7TH PETITIONER. |
| EXT.P1(F) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 8TH PETITIONER. |
| EXT.P1(G) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 11TH PETITIONER. |
| EXT.P1(H) | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO THE 12TH PETITIONER. |
| EXT.P2 | - | COPY OF G.O. (MS) NO.226/96/AD DATED 27.06.1996. |
| EXT.P3 | - | COPY OF G.O. (MS) NO.203/04/AD DATED 13.10.2004. |
| EXT.P4 | - | COPY OF THE NOTICE FOR PAYMENT OF GRATUITY ISSUED TO SHRI.P.K. MADHAVALAL, PLANT OPERATOR, OIL PALM INDIA LTD. |
| EXT.P5 | - | COPY OF THE REPRESENTATION DATED 11.04.2005 TO THE 1ST RESPONDENT. |
| EXT.P6 | - | COPY OF THE REPRESENTATION DATED 06.10.2005 TO THE 1ST RESPONDENT. |
| EXT.P7 | - | COPY OF THE JUDGMENT DATED 22.12.2005 IN WP(C) NO.35830/2005 OF THIS COURT. |
| EXT.P8 | - | COPY OF THE HEARING NOTE SUBMITTED ON 14.02.2006 BEFORE THE 1ST RESPONDENT ON BEHALF OF THE PETITIONERS. |
| EXT.P9 | - | COPY OF THE ORDER NO.1258/PUI/06/AD DATED 16.03.2006 ISSUED BY THE 1ST RESPONDENT. |

RESPONDENTS' EXHIBITS:-

**EXT.R2(A) - COPY OF THE STATEMENT SHOWING THE GRATUITY PAID
TO THE PETITIONERS.**

//TRUE COPY//

P.A. TO JUDGE

sp

K. VINOD CHANDRAN, J.

W.P(C). No.10247 of 2006-T

Dated this the 17th day of December, 2015.

JUDGMENT

The petitioners are all employees of the Oil Palm India Ltd., the 2nd respondent, a public sector undertaking under the 1st respondent. The petitioners' claim is that they ought to have been paid gratuity, computing the same as one month salary for every completed year of service. The petitioners rely on Ext.P2 Government Order. Ext.P2 order is specifically with respect to the 2nd respondent Company. There, the Government noticed that in the respondent company, the limit of gratuity, at the

rate of one month salary for every completed year of service, was a maximum of Rs.50,000/-. Since the Payment of Gratuity Act, 1972 [for brevity, the Act of 1972] was amended by Act, 1994 and the maximum ceiling limit enhanced to Rupees One lakh, the maximum limit was made as Rupees One Lakh, in the company also.

2. As per the provisions existING in the Act of 1972, the gratuity payable was 15 days salary for every completed year of service subject to a maximum of Rupees One lakh. The employees of the Company hence were entitled to one months salary for every completed year of service while the Act of 1972 prescribed half months pay alone. But the better terms were saved by reason of sub-section(5)of Section 4 of the Act of 1972.

3. The Payment of Gratuity Act was again

amended in 1997, wherein the ceiling limit was raised to Rs.3.5 lakhs. The Payment of Gratuity Act always provided for 15 days' wages for every completed year of service, with a maximum limit prescribed, as was noticed, Rs.50,000/- initially, then enhanced to Rupees One lakh in 1994 and again enhanced to Rs.3.5 lakhs on 24.09.1997. Though the employer provided for one month salary for every completed year of service it was subject to a maximum of Rupees One lakh. The stipulation in the Act was payment of 15 days' salary subject to a maximum of Rs.3.5 lakhs. Hence the employee could opt for whichever is the more beneficial scheme.

4. While Section 4(5) protects a more beneficial scheme, if the scheme of the employer is less beneficial than that provided by the Act of 1972, then the gratuity would be

payable as provided under the Act. Herein it has to be noticed that all the petitioners have received above Rupees One lakh, but however computing the same on the basis of 15 days' of service on every completed year of service; ie: as provided under The Payment of Gratuity Act. If the employees were paid under the scheme of the Company they would have been entitled to only a maximum of Rupees One Lakh.

5. Earlier , when the limit under the Act was enhanced, by Ext:P-2, the scheme of the Company also stood amended. But the subsequent enhancement of the limit was not brought in by the Company. Hence the employees can have a claim only to the higher amounts, whether it is as per the scheme of the Company or under the Act. The petitioners cannot raise any grievance, since the Act by sub-section (5) of

Section 4 only protects an employee, from being deprived of the better terms and there can be no consequential claim that the computation has to be made under the scheme of the Company and the maximum limit as per the Act be applied.

6. The statutory right is to receive the better terms of gratuity under any award or agreement or contract of the employer. There is no right to apply alternatively the terms of the scheme and the terms of the statute. The statute provides for a comprehensive scheme and so does the Company. It has to be applied as a whole, to understand which is more beneficial.

7. The specific contention of the Company is that the Scheme as existed in the Company provided for payment of one month salary for every completed year of service subject to a maximum of Rupees One lakh. Hence the

petitioners would have been entitled to gratuity, even if computed at the rate of one month salary for every completed year of service, only to the maximum limit of Rupees One lakh.

8. By the amendment to the Payment of Gratuity Act in 2004, the limit was enhanced to Rs.3.5 lakhs. Hence, the statute provided a higher limit of Rs.3.5 lakhs. But the statute also provided that only 15 days' salary would be computed for every completed year of service. Hence, the Company was faced with two Schemes, one of its own, which provided a maximum limit of Rupees One lakh and the other as provided under the statute, which provided a maximum limit of Rs.3.5 lakhs. If the Company Scheme was applied, then the petitioners would have got only maximum of Rupees One lakh.

Herein, all the petitioners have been paid gratuity in excess of Rupees One lakh. This is because the more beneficial Scheme as per the statute was applied and in such circumstance, the gratuity could be computed only at 15 days' salary for every completed year of service. No infirmity or illegality can be found in the payments effected.

The writ petition would stand dismissed. No costs.

Sd/-

**K. VINOD CHANDRAN,
JUDGE.**

//True Copy//

P.A. to Judge.

sp/21/12/15