

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT:**

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 3RD DAY OF NOVEMBER 2015/12TH KARTHIKA, 1937

WP(C).No. 14069 of 2010 (G)

PETITIONER(S):

**1. MURALEEDHARAN A., AGED 58 YEARS,
S/O. A.MADHAVA PANICKER, USHUS (ANAT), NENMANIKKARA
PUDUKAD - 680 301.**

**2. C.R. THANKAPPAN, AGED 57 YEARS,
S/O RAGHAVAN, SREELAKSHMI, V P SASI ROAD
PALLURUTHY, KOCHI WORKING AS SENIOR
MANAGER, KSFE, SHANMUGHAM ROAD
BRANCH ERNAKULAM**

**BY ADVS.SRI.P.SREEKUMAR
SRI.K.S.MANU (PUNUKKONNOOR)
SRI.P.S.SIDHAN**

RESPONDENT(S):

**1. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY, MINISTRY OF FINANCE
NEW DELHI.**

**2. KERALA STATE FINANCIAL ENTERPRISES,
REPRESENTED BY ITS MANAGING DIRECTOR, BHADRATHA
THRISSUR.**

**3. STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, FINANCE DEPARTMENT
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**

R,R2 BY ADV. SRI.M.L.SAJEEVAN, SC, KSFE LTD.

R,R1 BY ADV. SMT.P.A.REZIA, CGC

R,R1 BY ADV. SRI.JOSE JOSEPH, SC, FOR INCOME TAX

**R2 BY ADV. SRI.LAL GEORGE, SC, KERALA STATE FINANCIAL
ENTERPRISES LTD.**

R2 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR

R2 BY ADV. SRI.P.GOPINATH

R2 BY ADV. SRI.P.BENNY THOMAS

R2 BY ADV. SRI.K.JOHN MATHAI

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03-11-2015, ALONG WITH WPC. 14126/2012, WPC. 17296/2013, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

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APPENDIX

PETITIONERS EXHIBITS:

EXT.P1 COPY OF THE COMMUNICATION DTD. 27.2.10 ISSUED BY THE 2ND
RESPONDENT.

RESPONDENTS EXHIBITS:

// TRUE COPY //

P.A TO JUDGE

SB

K. VINOD CHANDRAN, J.

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**W.P.(C) No.14069 of 2010 - G,
14126 of 2012-M and 17296 of 2013 - J**

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Dated this the 3rd day of November, 2015

J U D G M E N T

The petitioners are aggrieved by the deduction of income tax from the amounts disbursed as D.C.R.G. and leave encashment, on retirement on amounts exceeding respectively Rs.3,50,000/- and Rs.3,00,000/-.

2. The petitioners contend that while the Government employees were extended with exemption, for the entire amounts received as D.C.R.G and leave encashment, the same was confined, with respect to the petitioners, to the maximum amounts stipulated under the Payment of Gratuity Act, 1972 and with respect to the leave encashment; to the limit specified by the Central Government. The petitioners specifically referred to

sub-clause (ii) of Section 10(10) and 10(10AA) of the Income Tax Act, 1961.

3. Sub-clause (ii) of Section 10(10) of the Income Tax Act, exempts any payment received under the Payment of Gratuity Act, to the extent it does not exceed the amount calculated in accordance with the provisions of sub-sections (2) and (3) of Section 4 of the Gratuity Act. Sub-clause (i) of Section 10 (10AA) of the Income Tax Act exempts all payment, received by an employee of the Central Government or State Government, of the cash equivalent of the leave salary in respect of the period of earned leave which is credited at the time of his retirement or otherwise; from exigibility to tax. However sub-clause (ii) of section 10(10AA) of the Income Tax Act, grants such benefits to employees other than of the Central Government or the State Government, only to the extent of the encashment of leave salary as does not exceed 10 months salary, subject again to the limits specified by the Central Government, by notification.

4. In the present case all the petitioners retired just prior to the amendment brought to the Payment of Gratuity Act. The effective date of amendment, i.e, on 24.05.2010 falls after the date of retirement. By the amendment, the limit was enhanced from Rs.3,50,000/- to Rs.10,00,000/-. Likewise notification, in the same period, was brought out under sub- clause (ii) of section 10(10AA) of the Income Tax Act, enhancing the limit of leave encashment from Rs.3,00,000/- to Rs.3,50,000/-.

5. The learned Counsel appearing for the petitioners contend that the exemption so granted to Central Government and State Government employees and declined in the case of other employees is arbitrary and discriminatory. It is also argued that the amendments, enhancing the limit was brought out after 13 years and hence the inaction of the Central Government cannot be a reason to disentitle the petitioners from such exemption.

6. With respect to the claim of discrimination, the

issue is no longer res integra since, the Hon'ble Supreme Court has considered the same in **Arun Kumar and others v. Union of India and others [(2006) 286 ITR, 89 (SC)]**, wherein similar exemptions available, with respect to the House Rent Allowance under Rule 3 of the Income Tax Rules 1962 came up for consideration. Therein also, the plea was that the Government employees and employees in private sector are treated differently, inviting the vice of the discrimination, which the Hon'ble Supreme Court negated. Basing the reasoning on Article 14 of the Constitution of India, it was held that there could be no discrimination found as the two sets of employees treated differently, cannot be said to be equally situated. They formed a class different and cannot be equated under Article 14, was the finding. In such circumstance, following the above binding precedent, the contention raised by the petitioners with respect to discrimination has to be rejected.

7. The learned Counsel for the petitioners have an

argument that in the cited case the employees who raised the challenge were employed under the private sector who had demonstrably better remuneration and perquisites than Government employees. Here the petitioners were employed in the respondent organisation which was under the direct control of the State and had much lesser service benefits than the State Government Employees. However that does not commend a deviation from the dictum laid down by the Hon'ble Supreme Court that the distinction made between the Government employees and others is a reasonable classification based on intelligent differentia and discloses a rational nexus to the object sought to be achieved; the twin tests to sustain a classification. The classification having been found to be proper, the contention is reduced to a mere plea of hardship, which cannot be urged against taxing statutes.

8. The further contention is with respect to the Central Government having not acted in time to bring in the

enhancement. It is to be noticed that the petitioners' retired before the enhancement was made. The amendment to the Payment of Gratuity Act and the enhancement of the limit prescribed under sub-clause (ii) of section 10(10AA) of the Income Tax Act was subsequent to the retirement of the petitioners. In such circumstance, this Court cannot order retrospective effect to the said enhancement nor can the same be directed to be applied in the case of the petitioners merely for the reason of the hardships caused to the petitioners. The enhancement having not been made with a retrospective effect, it can only be applied prospectively. The petitioners would be liable to tax on the amounts received on retirement in excess of the exemption granted by the Income tax Act.

9. Considering the fact that there was a stay on the admission of the writ petition from remitting the amounts to the Income Tax Department, the respondent employer, is directed to make such remittance, within a period of one month from the

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and connected cases

date of receipt of the certified copy of this judgment. It is made clear that since the remittance was not made on account of the stay order of this Court, no interest liability as per the Income Tax Act could be mulcted either on the respondent employer or on the individual petitioners.

The writ petitions would stand dismissed.

**Sd/-
K. VINOD CHANDRAN,
JUDGE**

SB/04/11/2015

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P.A to Judge.