

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

WP(C).No. 27579 of 2005 (G)

PETITIONER(S):

**KATHREENA FERNANDEZ, AGED 48 YEARS,
W/O.LATE ANTONY FERNANDEZ, H.NO.XVI/1876,
NORTH PALLURUTHY, KOCHI-6.**

BY ADV. SRI.TOM JOSE

RESPONDENT(S):

- 1. M/S.HASH & COMPANY R/BY ITS MANAGER,
COLLIS BUILDING, VENKITARAMAN ROAD, W/ISLAND,
KOCHI-3.**
- 2. UNITED STEVEDORES ASSOCIATION OF COCHIN
(P) LIMITED, R/BY ITS SECRETARY, W/ISLAND,
KOCHI-3.**
- 3. COCHIN STEAMER AGENTS ASSOCIATION,
R/BY ITS SECRETARY, W/ISLAND, KOCHI-3.**
- 4. THE CONTROLLING AUTHORITY & THE
ASSISTANT LABOUR COMMISSIONER (CENTRAL) ERNAKULAM,
KENDRIYA SHRAM SADAN, OOLIMUGHAL, KAKKANAD,
KOCHI-30.**
- 5. THE APPELLATE AUTHORITY UNDER THE
PAYMENT OF GRATUITY ACT 1972 AND THE REGIONAL
LABOUR COMMISSIONER (CENTRAL) ERNAKULAM, KERNDRIYA
SHRAM SADAN, OOLIMUGHAL, KAKKANAD,
KOCHI-30.**

**R3 BY ADVS. SRI.K.ANAND (A.201)
SMT.LATHA KRISHNAN
R4 & 5 BY SRI.N.NAGARESH, ACGSC**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

PJ

APPENDIX

PETITIONER(S)' EXHIBITS

- P1: TRUE COPY OF THE APPLICATION REFERRED BY THE PETITIONER BEFORE THE RESPONDENTS 1 TO 3 DATED 17/6/99 SEEKING IMMEDIATE DISBURSAL OF HER LATE HUSBANDS SERVICE BENEFITS.**
- P2: TRUE COPY OF THE GRATUITY SANCTIONED ORDER ON TWO DIFFERENT PARTIES AS ISSUED BY THE R1 ON BEHALF OF THE R2,3, ALSO DATED 9/7/99**
- P3: TRUE COPY OF THE LETTER ISSUED TO THE R1 BY THE VICE-PRESIDENT OF CTTU UNION IN RESPONSE TO EXT.P2 NOTICE DATED 10/7/99.**
- P4: TRUE COPY OF THE MEMORANDUM OF SETTLEMENT DATED 19/6/93 WITH REGARD TO THE COCHIN PORT CONTAINER HIGH STACKING WORKERS POOLING SCHEME 1993**
- P5: TRUE COPY OF THE SALARY AGREEMENT WHICH ENVISAGES THE SERVICE CONDITIONS IN ADDITION TO EXT.P4 DATED 14/10/95**
- P6: TRUE COPY OF THE WAGE STATEMENT OF THE DECEASED ANTONY FERNANDEZ (WAGES 504) DATED MAY, 1998**
- P6(A): THE WAGE STATEMENT OF THE DECEASED EMPLOYEE FOR THE MONTH OF JUNE 1998**
- P6(B): THE WAGE STATEMENT OF THE PETITIONERS LATE HUSBAND FOR THE MONTH OF JULY 1998**
- P6(C): THE WAGE STATEMENT OF THE PETITIONERS LATE HUSBAND FOR THE MONTH OF JANUARY 1999**
- P7: TRUE COPY OF THE DECISION/ORDER DATED 28/3/03 OF THE CONTROLLING AUTHORITY/ASST.LABOUR COMMISSIONER (CENTRAL) ERNAKULAM.**
- P8: TRUE COPY OF THE NOTICE ISSUED BY THE R5/APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT IN GA NO.43/02 DATED 29/11/02**
- P9: TRUE COPY OF THE DECISION OF THE APPELLATE AUTHORITY DATED 28/3/03 IN GA NO.43/2002 B-1.**

RESPONDENT(S)' EXHIBITS

NIL.

/ TRUE COPY /

P.S. TO JUDGE

PJ

A.M. SHAFFIQUE, J.

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Dated this, the 9th day of November, 2015

J U D G M E N T

Petitioner in this writ petition challenges Exts.P7 and P9 orders by which the claim for getting gratuity by the legal heir of the deceased employee had been reckoned by the Controlling Authority which was confirmed in appeal by the appellate authority. It is *inter alia* contended that the basis on which the commutation has been made is absolutely wrong. According to the petitioner, there is evidence to show that gratuity is payable for a period of 36 years on the allegation that the petitioner's late husband was an employee right from 1963 and he expired on 17/4/1999. It is contended that the petitioner's husband was governed by Ext.P4 memorandum of settlement and by Ext.P5 salary agreement, he was also entitled for the benefit of wage revision. The contention urged is that the Controlling Authority had taken a decision without referring to the aforesaid factual situation.

2. It is apparent from the decision taken in terms of

Ext.P7 by the Controlling Authority that the said authority had gone into the entire factual circumstances involved in the matter and the contentions urged by the petitioner has also been considered in detail. From a perusal of the appellate order also, it is rather clear that the factual circumstances involved in the matter had been reappreciated and appropriate order had been passed.

3. It is the settled position of law that while exercising the power of judicial review, this Court may not reappreciate factual findings involved in the matter, unless such findings are so perverse. The disputed questions of fact had already been decided by the Controlling Authority as well as the Appellate Authority and they have arrived at a conclusion which cannot be termed as perverse to exercise power of under judicial review.

4. The main question urged is with reference to the number of years of service that the petitioner's late husband had undertaken and as both the statutory authorities have already arrived at a finding, I do not think that this Court will be justified

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in interfering with the said finding. Further, no materials have been placed on record to indicate that the orders passed by the authorities are in any way illegal or perverse.

Under such circumstances, there being no merit in the contentions urged, this writ petition is dismissed.

Sd/-
A.M. SHAFFIQUE, JUDGE

Rp
9/11/2015

//True Copy//

P.S to Judge