

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

**PRESENT:**

**THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN**

**MONDAY, THE 5TH DAY OF JANUARY 2015/15TH POUSHA, 1936**

**WP(C).No. 22605 of 2013 (A)**  
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**PETITIONER(S):**  
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**K.A.SUNNY, AGED 54 YEARS,  
S/O.ANTONY, KOMBARAKKARAN HOUSE, P.O.KUTTUR,  
THRISSUR - 680 013.**

**BY ADVS.SRI.C.HARIKUMAR  
SMT.C.B.ANUROOPA**

**RESPONDENT(S) :**  
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- 1. REGIONAL JOINT LABOUR COMMISSIONER,  
OFFICE OF THE REGIONAL JOINT LABOUR COMMISSIONER,  
ERNAKULAM - 682 030.**
- 2. CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT,  
1972 & DISTRICT LABOUR OFFICER,  
OFFICE OF THE DISTRICT LABOUR OFFICER,  
THRISSUR- 680 001.**
- 3. P.R.MOHINI, THARAMMEL HOUSE,  
P.O.MINALUR, THRISSUR- 680 581.**
- 4. M/S.FERRO CHEMICALS PRIVATE LIMITED,  
INDUSTRIAL DEVELOPMENT PLOT, ATHANI, THRISSUR- 680 581,  
REP. BY ITS MANAGING DIRECTOR, JAYA JOSE.**

**R1 & R2 BY GOVERNMENT PLEADER SRI.T.J.MICHAEL  
R3 BY ADV. SRI.A.V.XAVIER**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 05-01-2015, THE COURT ON THE SAME DAY DELIVERED  
THE FOLLOWING:**

Msd.

**APPENDIX**

**PETITIONER(S)' EXHIBITS**  
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- EXT.P1:** THE TRUE COPY OF THE CLAIM FORM 'O' ALONG WITH THE NOTICE ISSUED TO THE PETITIONER DATED 20/09/2010.
- EXT.P2:** THE TRUE COPY OF THE COUNTER IN G.C.NO.42 OF 2010 DATED 08/12/2010 FILED BY THE PETITIONER BEFORE THE 2ND RESPONDENT.
- EXT.P3:** THE TRUE COPY OF THE REPLY FILED BY THE 3RD RESPONDENT IN G.C.NO.42 OF 2010 DATED 19/01/2011 BEFORE THE 2ND RESPONDENT.
- EXT.P4:** THE TRUE COPY OF THE PROOF AFFIDAVIT ALONG WITH THE COPY OF THE DEPOSITION IN G.C.NO.42 OF 2010 FILED BY THE 3RD RESPONDENT BEFORE THE 2ND RESPONDENT DATED 23/02/2011.
- EXT.P5:** THE TRUE COPY OF THE ACKNOWLEDGEMENT OF THE 3RD RESPONDENT OF THE RECEIPT OF PAYMENT DATED 17/03/2009.
- EXT.P6:** THE TRUE COPY OF THE PROOF AFFIDAVIT FILED BY THE PETITIONER IN LIEU OF CHIEF EXAMINATION ALONG WITH THE DEPOSITION IN G.C NO.42 OF 2010 DATED 09/11/2011.
- EXT.P7:** THE TRUE COPY OF THE ORDER ISSUED BY THE CONTROLLING AUTHORITY IN G.C NO.42 OF 2010 DATED 01/06/2012.
- EXT.P8:** THE TRUE COPY OF THE ORDER DATED 10/04/2013 IN G.A NO.5 OF 2012 RECEIVED BY THE PETITIONER ON 30/05/2013.
- EXT.P9:** THE TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED 20/08/2013.

**RESPONDENT(S)' EXHIBITS**  
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**NIL**

**//TRUE COPY//**

**P.S.TO JUDGE.**

Msd.

**K. Vinod Chandran, J.**

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W.P.(C)No.22605 of 2013

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Dated this the 5<sup>th</sup> day of January, 2015.

**JUDGMENT**

1. Petitioner is aggrieved with the order passed by the authority under the Payment of Gratuity Act, 1972, (hereinafter referred to as the “Act”, for short) and the confirmation in appeal by Exts.P7 and P8 respectively. The short contention raised by the petitioner in appeal and before this Court is that, the petitioner was only the Manager and the fourth respondent is the actual employer. The third respondent raised a claim before the controlling authority under the Act with the Manager of the fourth respondent as the responsible employer. Summons was issued and the petitioner herein appeared before the controlling authority. No objection was taken to the petitioner being not responsible for payment of gratuity. Admittedly, the petitioner was the Manager of the fourth respondent and an objection was filed raising the contention that the amounts due to the petitioner were, in

fact, paid and that the third respondent had voluntarily resigned from the services of the fourth respondent. No objection as to the actual employer, not being impleaded, was taken before the controlling authority. The petitioner, who was examined as R.W.1, produced a resignation letter and also deposed that compensation was paid to the third respondent. The controlling authority found that the resignation letter itself was in the letter-head of the employer and no receipt was produced to substantiate the payment of compensation. An amount of Rs.20,769/- was awarded.

2. For the first time, the petitioner raised a contention that he is also an employee of the management in an appeal filed before the appellate authority under the Act. The appellate authority found that no such contention was raised in the written statement filed by the appellant before the original authority. Learned counsel for the petitioner would rely on a statement by the third respondent in the cross-examination that, the original employer has not been impleaded.

However, such specific contention, having not been taken before the original authority, the appellate authority nor this Court can look into the same. Further, it is to be specifically noticed that, neither before the appellate authority nor before this Court the petitioner provide any details as to the constitution of the third respondent or the person, who is in actual ownership of the third respondent. Before this Court, the petitioner has impleaded the fourth respondent and one person is shown as the Managing Director. The fourth respondent is also seen to have accepted service from this Court.

3. Learned counsel appearing for the third respondent would contend that Section 2f (iii) of the Act defines “employer” *inter alia* as any person who has the ultimate control over the affairs of the society. In the present case, the petitioner had appeared before the controlling authority and had also deposed as the representative of the employer and produced documents, which were in the custody of the employer itself. In such circumstances, this Court does not find any infirmity

in the gratuity being directed to be paid by the petitioner. However, if the ultimate owner of the establishment is the person impleaded in the representative capacity of the fourth respondent, then, necessarily, the petitioner would have remedies left open to proceed for recovery of the amounts paid by the petitioner to the third respondent as gratuity from the said fourth respondent.

Writ petition is dismissed with the above observations.

**K. Vinod Chandran, Judge.**

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