



2024/KERC/37600

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

MONDAY, THE 3RD DAY OF JUNE 2024 / 13TH JYAISHTA, 1946

WP(C) NO. 35362 OF 2019

PETITIONER:

S.KAMALADHARAN
AGED 60 YEARS
THUNDATHIL VEEDU, IDUKKI COLONY.P.O., PAREMAVU,
IDUKKI-685602.

BY ADVS.
P.SREEKUMAR
SRI.K.ARJUN VENUGOPAL
SHRI.ASWIN KUMAR M J
SMT.HELEN P.A.

RESPONDENTS:

- 1 THE MANAGING DIRECTOR,
KERALA SHIPPING AND INLAND NAVIGATION CORPORATION LTD.,
61.1227, UDAYA NAGAR ROAD, GANDHI NAGAR, KOCHI-682020.
- 2 THE MANAGING DIRECTOR,
KERALA TOURISM DEVELOPMENT CORPORATION LTD., CORPORATE
OFFICE, PB NO.5424, MASCOT SQUARE,
THIRUVANANTHAPURAM-695033.
- 3 THE MANAGING DIRECTOR,
KERALA STATE BEVERAGES CORPORATION LTD., BETCO TOWER,
VIKAS BHAVAN.P.O., THIRUVANANTHAPURAM-695033.

BY ADVS.
SRI.VIPIN P VARGHESE
SRI.SANTHOSH MATHEW, SC, KINCO
SRI.P.A.AHAMED, SC, KTDC LTD.
SRI.NAVEEN.T., SC, KERALA STATE BEV.CO. M. AND M.
ADARSH MATHEW(KAR/2577/2015)
MERLINE MATHEW(K/001279/2022)
CELINE JOHN(K/209/2022)
MEHNAZ P. MOHAMMED(K/001360/2023)
ANIRUDH G. KAMATH(K/001753/2023)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
03.06.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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M A ABDUL HAKHIM, J**-----
WPC No.35362 of 2019
-----****Dated this the 03rd June, 2024****JUDGMENT**

1. The petitioner is a retired employee of the 1st respondent. The grievance of the petitioner is that his full retirement benefits are not paid on account of the disputes with respect to the contributions to be made by the 2nd and 3rd respondents under whom he worked on deputation.
2. Petitioner retired from the service of the 1st respondent on 30.11.2014, after completing 22 years of service. The petitioner had worked under the 2nd respondent on deputation for a period of 7 years 10 months from 01.12.1994 to 06.09.1997 and from 09.03.1998 to 12.05.2003. Petitioner had worked with the 3rd respondent on deputation for a period of 4 years 11 months for the period from 19.12.2009 to 29.11.2014.
3. The case of the petitioner is that petitioner was paid only an amount of Rs.1,45,338/- towards gratuity for a total period of 22 years which



would come to more than 3.5 lakhs. His Earned Leave Surrender Benefits were also not paid. According to the petitioner the 1st respondent maintains a stand that the benefits could not be disbursed since the proportionate sums due from the 2nd and 3rd respondents were not received by the 1st respondent. Hence the petitioner has filed the present writ petition seeking direction to the 1st respondent to pay the retirement benefits along with interest for the delayed payment and also direction to the 2nd and 3rd respondent to make payment to the 1st respondent towards gratuity and Earned Leave Surrender.

4. The Standing Counsel for the 1st respondent filed a Statement dated 11/02/2020 on behalf of the 1st respondent stating that the petitioner was an employee of the 1st respondent as Lascar from 25.03.1993 to 30.11.2014; that he retired from service on 30.11.2014 on superannuation at the age of 58 years; that it could not pay the total gratuity due to the petitioner since the 2nd respondent sanctioned only an amount of Rs.24,503/-calculating gratuity on the basis of the monthly salary of Rs.5,309/- which was last drawn from the 2nd respondent in the year 2003, whereas the 2nd respondent is liable to pay Rs.1,29,189/- as gratuity for the period of deputation under the 2nd respondent on the basis of the monthly salary of Rs.27,991/- which was last drawn by the petitioner before retirement in the year 2014;



that in spite of several communications from the 1st respondent, the 2nd respondent sanctioned only an amount of Rs.24,503/- as per Annexure A2 order dt 16.11.2015; that the said Order was silent on the interest for the period of delay and the Value of Earned leave; that the Cheque for Rs.24,503/- of the 2nd respondent was forwarded to the petitioner and he refused to accept the same stating that the amount is low; that the 1st respondent issued Annexure A3(b) communication dt 24.03.2015 demanding the 2nd respondent to remit the balance amount of Rs.1,04,686/-; that the 1st respondent returned the cheque for Rs.24,503/- to the 2nd respondent with Annexure A4 Communication that the petitioner refused to accept the cheque, demanding Rs.1,29,189/- as per his last pay; that the 3rd respondent fixed Rs.64,659/- as gratuity payable by it and paid an amount of Rs.18,352/- after deducting Rs.46,107/- towards the liabilities of the petitioner, whereas an amount of Rs. Rs.80,744/- is due from the 3rd respondent towards gratuity on the basis of the monthly salary of Rs.27,991/- last drawn before retirement; that the balance gratuity of Rs.20,284/- is due from the 3rd respondent; that since the 2nd respondent did not give the Last Pay Certificate at the time of repatriation the 1st respondent could not calculate the Value of Earned Leave hence the 1st respondent sought payment of Rs.2,37,978/- from



the 2nd respondent as the Value of Earned Leave for 234 Earned Leaves based on the salary drawn before retirement assuming that the petitioner had not availed or surrendered any earned leave; and that the 3rd respondent has released Rs.45,634/- towards Value of Earned Leave and hence nothing towards Value of Earned Leave is due from the 3rd respondent.

5. The Standing Counsel for the 2nd respondent filed a Statement dt. 25.02.2020 on behalf of the 2nd respondent stating that the 3rd respondent is liable to pay a gratuity of only Rs.24,503/- for 8 years service of the petitioner with it based on the salary of Rs.5,309/- last drawn by the petitioner from the 3rd respondent; that the 1st respondent did not furnish the details of Earned Leave in spite of repeated reminders and therefore the 2nd respondent could not remit the Leave Encashment Entitlement to the 1st respondent; that the 2nd respondent is agreeable to pay gratuity at the last drawn salary from the 2nd respondent as well as Leave Encashment on receipt of Certificate of Leave on credit with reasonable interest from the due date.
6. The 3rd respondent filed a Counter Affidavit dt 10.02.2020 stating that the gratuity due to the petitioner from the 3rd respondent for the period from 29.12.2009 to 29.11.2014 is Rs.64,659/- and an amount of



Rs.18,352/- after deducting the liability of Rs.46,107/- was paid to the 1st respondent on 07.03.2015 as revealed from Ext.R3(a) Communication;and that the amount due to the petitioner under the head Earned Leave Surrender for 48 days is Rs.45,634/- and the same was also paid to the petitioner on 18.02.2015 as revealed from Ext.R3(b) Communication.

7. I heard the Senior Counsel Sri.P.Sreekumar instructed by Adv.Sri.K. Arjun Venugopal for the petitioner, Adv.Sri. Vipin P Varghese who appeared for the 1st respondent, Adv.Sri. P.A Ahamed assisted by Adv.Sri. Thoufeek Ahamed for the 2nd respondent and Adv.Sri.T.Naveen for the 3rd respondent.
8. There is no dispute with regard to the periods of service of the petitioner with the respondents 1, 2 and 3. With respect to the claim of gratuity of the petitioner, it is revealed from the pleadings that the dispute is essentially with respect to the monthly salary based on which the gratuity is be calculated for the period of deputation with the 2nd respondent.
9. The contention of the Counsel for the 2nd respondent is that the 2nd respondent is liable to pay gratuity based on the monthly salary of Rs.5,309/-which was last drawn by the petitioner from the 2nd



respondent. According to the Senior Counsel petitioner and Counsel for 1st respondent, the 2nd respondent is liable to pay the gratuity on the basis the monthly salary of Rs.27,991/- which was last drawn by the petitioner before retirement. They pointed out that Rs.1,29,189/- is from the 2nd respondent towards gratuity as revealed from Ext.P3 Calculation sent by the 1st respondent to the 2nd respondent. On the other hand, according to the Counsel for the 2nd respondent the gratuity amount payable to the petitioner from it is Rs.24,503/- based on the salary of Rs.5,309/- drawn by the petitioner from the 2nd respondent.

10. Section 4(1) of the Payment of Gratuity Act 1972 provides for payment of gratuity to an employee on termination of his employment. Section 4(2) provides that the employer shall pay gratuity to an employee based on the rate of wages last drawn by the employee concerned. In view of the said provisions, the monthly salary which is relevant for calculating gratuity is the salary which was drawn by the employee immediately before his termination of employment. The total gratuity payable to the employee has to be calculated based on the monthly salary last drawn by the employee immediately preceding his termination, irrespective of the deputation



service of the employee. There is no provision to calculate separate gratuity amounts for parent employer service and deputation service. Calculation of gratuity for deputation service separately is impermissible in law. Once total gratuity payable to the employee is calculated by the Parent employer based on the monthly salary last drawn by the employee immediately preceding his termination, the Parent Employer has every right to seek contributions from the employers with whom the employee had worked on deputation, for the period of deputation. The Employer which employed an employee on deputation cannot contend that the gratuity for the period of deputation is to be calculated based on the salary last drawn by the employee from such employer.

11. If the employer which availed the service of the employee on deputation is allowed to take a stand that he is liable to pay gratuity based on the salary last drawn by the petitioner from him, there would be deficit in the total gratuity amount payable to the employee, which would be in violation of the provisions of the Payment Gratuity Act. As per Section 4 of the Payment of Gratuity Act, the employee is entitled to get his gratuity calculated based on his last drawn wages immediately before termination irrespective of whether he worked on



- deputation or not. The Parent Employer is not liable to make good the deficit amount of gratuity on account of the lesser payment by the employer who availed service on deputation.
12. In view of the above proposition of law, the contention of the 2nd respondent that the gratuity payable by the 2nd respondent is to be calculated on the basis of the monthly salary of Rs.5,309/- which is lastly drawn by the petitioner from the 2nd respondent is unsustainable. The 2nd respondent is liable to pay gratuity amount to the petitioner for the deputation period based on the monthly salary of Rs.27,991/- which was last drawn by the petitioner immediately preceding his termination.
13. With respect to the gratuity payable by the 3rd respondent there is a difference of Rs.20,284/- according to the 1st respondent. The 3rd respondent has not disputed the rate of monthly salary on the basis of which the gratuity is to be calculated for the period of deputation. The 3rd respondent is also liable to pay gratuity amount to the petitioner for the deputation period based on the monthly salary of Rs.27,991/-.
14. In view of the above discussion, the 1st respondent is liable to fix the gratuity amount for the whole employment period of the petitioner



based on the last drawn salary of Rs.27,991/- per month. After fixing the total gratuity payable to the petitioner, the 1st respondent has every right to seek contribution from the 2nd and 3rd respondents for the periods of deputation with them.

15. Since there is inordinate delay in settling the gratuity payable to the petitioner, the 2nd and 3rd respondents are bound to compensate the petitioner for the delay by making payment of the gratuity amount due to him. The 2nd and 3rd respondents are liable to pay the applicable interest @ 8% per annum for the delay in making the payment of the gratuity amount at the least from the date of Ext.P3 Communication dated 30/03/2015 . The 2nd respondent has agreed to pay reasonable interest in its Statement also.
16. With respect to the claim of Earned Leave Surrender Benefits, it is seen from the Counter Affidavit of the 3rd respondent that it has paid an amount of Rs.45,634/- to the 1st respondent, the same is admitted in the Statement filed on behalf of the 1st respondent. The petitioner has received the same also.
17. But with respect to the Earned Leave Surrender Benefits due from the 2nd respondent, the case of the 2nd respondent is that the 1st respondent has not furnished necessary details in spite of repeated reminders and



hence the 2nd respondent could not remit the Leave Encashment Entitlement to the 1st respondent. It is specifically stated in the Statement filed by the 1st respondent that since the 2nd respondent did not give Last Pay Certificate at the time repatriation, the 1st respondent could not calculate the Value of Earned Leave and hence the Value of Earned Leave was arrived at Rs.2,37,978/- for 234 Earned Leaves based on the last drawn salary on the date of retirement assuming that the petitioner had not availed or surrendered any earned leave. Ext.P3 is a Communication dt 30.03.2015 addressed to the 3rd respondent in which the 1st respondent has calculated the Value of Earned Leave at Rs.2,37,978/-. The 2nd respondent has no contention that it has not received Ext.P3. There is no document showing that the 2nd respondent responded to Ext.P3. Though the 2nd respondent contends that in spite repeated reminders the 1st respondent has not furnished the details of the earned leave, no document is produced to substantiate the same. Hence the contention of the 2nd respondent that the 2nd respondent could not remit the Value of Earned Leave to the 1st respondent for want of details from the 1st respondent is unsustainable. The stand of the 1st respondent is that the 1st respondent has furnished all relevant details with respect to the earned leave in Ext.P3. If the 2nd respondent was in requirement of more details, the 2nd respondent



ought to have secured those details from the 1st respondent. Hence there is no justification for the 2nd respondent to withhold the Value of Earned Leave to the petitioner. The 2nd respondent is liable to pay interest @ 6 % of or the delay in payment of the Value of Earned Leave to the petitioner.

18. Accordingly this writ petition is disposed of with the following directions:

- a. the 1st respondent is directed to fix the total amount of gratuity payable to the petitioner based on the monthly salary of Rs.27,991/- and issue necessary communications to the 2nd and 3rd respondents to pay their share/balance share within one month from the date of receipt of copy of this judgment and the 2nd and 3rd respondents shall pay the amounts demanded by the 1st respondent with interest @ 8% per annum from 31/03/2015 till payment, within two months from the date of receipt of the Communication from the 1st respondent.
- b. The 2nd respondent shall communicate the Last Pay Certificate of the petitioner to the 1st respondent within a period of one



month from the date of receipt of copy of this judgment and the 1st respondent shall fix the Value of Earned Leave payable by the 2nd respondent and communicate the same to the 2nd respondent within one month from the date of receipt of the Last Pay Certificate received from the 2nd respondent and the 2nd respondent shall pay the amount fixed by the 1st respondent as the Value of Earned Leave with interest @ 6% from 31.03.2015 within a period of two months from the date of receipt of communication from the 1st respondent.

- c. The 1st respondent shall pay the gratuity amounts and interest received from the 2nd and 3rd respondents and the Value of Earned Leave and interest received from the 2nd respondent to the petitioner within a period of one month from the dates of receipts of the said amounts.

M A ABDUL HAKHIM, JUDGE

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APPENDIX OF WP(C) 35362/2019

PETITIONER EXHIBITS

- EXHIBIT P1 A STATEMENT SHOWING THE GRATUITY BENEFIT PREPARED BY THE 1ST RESPONDENT.
- EXHIBIT P2 A TRUE COPY OF THE STATEMENT SHOWING THE EARNED LEAVE SURRENDER BENEFIT PREPARED BY THE 1ST RESPONDENT.
- EXHIBIT P3 A TRUE COPY OF THE LETTER DATED 30.3.2015 ISSUED BY THE 1ST RESPONDENT TO THE 2ND RESPONDENT.
- EXHIBIT P4 A TRUE COPY OF THE LETTER DATED 11.3.2015 ADDRESSED TO THE 3RD RESPONDENT.
- EXHIBIT P5 A TRUE COPY OF THE ORDER DATED 6.6.2016 OF THE STATE HUMAN RIGHTS COMMISSION.
- EXHIBIT P6 A TRUE COPY OF THE REPLY RECEIVED BY THE PETITIONER UNDER THE RIGHT TO INFORMATION ACT.
- EXHIBIT P7 A TRUE COPY OF THE DISCHARGE CARD SHOWING HIS INPATIENT TREATMENT AT THE DISTRICT AYURVEDA HOSPITAL.

RESPONDENT EXHIBITS

- EXHIBIT 3(A) TRUE COPY OF THE COMMUNICATION DATED 12-3-2015 ISSUED BY THE CORPORATION SHOWING THE TRANSFER OF BALANCE AMOUNT TO THE 1ST RESPONDENT.
- EXHIBIT R3(B) TRUE COPY OF THE COMMUNICATION DATED 24-2-2015 ISSUED BY THE CORPORATION SHOWING THE TRANSFER OF AMOUNT TO THE 1ST RESPONDENT.