

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 22ND DAY OF MAY 2023 / 1ST JYAISHTA, 1945

WP(C) NO. 19171 OF 2012

PETITIONER/S:

K. RAJENDRA PRASAD
REGIONAL STATE ENGINEER (RETD) ,
KERALA STATE HOUSING BOARD,
RESIDING AT HOUSE NO.XII/774,
SATELLITE ROAD, PADAMUGAL, KOCHI - 30.

BY ADVS.
SRI.RAJAN JOSEPH
SRI.KOSHY GEORGE

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695 001
- 2 PRINCIPAL SECRETARY
HOUSING (A) DEPARTMENT, STATE OF KERALA,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM - 695001
- 3 THE SECRETARY
KERALA STATE HOUSING BOARD, SANTHINAGAR,
THIRUVANANTHAPURAM - 695 001
- 4 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
MINISTRY OF LABOUR AND EMPLOYMENT, NEW DELHI.

BY ADVS.
SR.GOVERNMENT PLEADER SRI.C.N.PRABHAKARAN
SRI.GEORGE BOBAN, SC, K.S.H.B.
SRI.K.DENNY DEVASSY, SC, K.S.H.B.
SRI.MANOJ RAMASWAMY, SC, KERALA STATE HOUSING BOARD
T.K.SAJEEV, SC, K S H B

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
22.05.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

“C.R”**JUDGMENT**

The petitioner retired as Regional Engineer from the Kerala State Housing Board (for short, 'the Board') on 31.05.2002. The 3rd respondent, the Secretary of the Board, by proceedings dated 20.05.2006, sanctioned the pensionary benefits of the petitioner; but withheld his DCRG amounting to Rs.2,57,400/- and also the last pay for the month of May, 2002 amounting to Rs.21,712/- towards his liability on account of audit objections. Aggrieved by the withholding of DCRG, the petitioner approached this Court and this Court, by Ext.P1 judgment, directed the Board to disburse the DCRG withheld, together with the salary for the month May, 2002 within a period of one month from the date of receipt of the judgment. The entitlement of the petitioner to claim interest for the delay in disbursement of DCRG and pay for last month was left open. Pursuant to Ext.P1 judgment, the Secretary of the Board, by Ext.P2 proceedings dated 04.04.2012, accorded sanction for

payment of DCRG and the last month's pay.

2. According to the petitioner, the DCRG was determined and disbursed to him as per the 'then existing rule' and in view of the amendment introduced to section 4(3) of the Payment of Gratuity Act, 1972 by Act 15 of 2010 with effect from 17.05.2010, he is entitled to the maximum gratuity of Rs.10,00,000/- (Ten lakhs). Therefore, the petitioner has filed this writ petition for direction to the respondents to disburse the DCRG as provided under section 4(3) of the Payment of Gratuity Act, 1972, amended by Act 15 of 2010 and for 9% interest for 9 years and 11 months on the amount of gratuity.

3. Heard counsel on both sides.

4. The petitioner who was an employee of the Board is regulated by the Kerala State Housing Board Employees' (Pension and other Retirement Benefits) Regulations, 1990. Regulation 4 of the said Regulations provides that the rules contained in Part III of Kerala Service Rules for the time being in force and the decisions, rulings and notifications given or

issued by the Government of Kerala from time to time except those specified in the schedule appended to the Regulations, shall *mutatis mutandis* apply to all the employees of the Board for regulating their pension and other retirement benefits. Rule 68 of Part III of the KSR deals with the amount of gratuity payable to an employee. No doubt, the petitioner is an employee coming within the ambit of section 2(e) of the Payment of Gratuity Act, 1972. Though he is governed by the provisions of the Kerala Service Rules, section 14 of the Payment of Gratuity Act, 1972 provides that the provisions of the Payment of Gratuity Act and the rules made thereunder shall have overriding effect on other enactments. The Government of Kerala has not exempted the Board from the operation of the provisions of the Payment of Gratuity Act, 1972 invoking its powers under section 5 of the Act. In view of the overriding provisions contained in section 4(3) of the Payment of Gratuity Act, 1972, the employees of the Board can claim gratuity in terms of section 4(3) thereof, however, in such

circumstances, they cannot claim gratuity available under the KSR.

5. If the employee claims gratuity under the Payment of Gratuity Act, 1972, section 4 provides for payment of gratuity at the rate of 15 days' wages for each completed year of service subject to a maximum as may be notified by the Central Government from time to time under sub-section 3. If the employee claims DCRG under the KSR, the amount of gratuity will be determined under Rule 68 of Part III of the KSR, subject to the maximum prescribed thereunder. The amount of gratuity will be one half of the "emoluments" of an employee for each completed year of qualifying service subject to a maximum of 16½ times the "emoluments".

6. As per section 4 of the Payment of Gratuity Act, 1972, the gratuity shall be payable to an employee on the termination of his employment. The employment of the petitioner was terminated on 31.05.2002 on his superannuation from service. The gratuity thus became payable to the petitioner with effect

from 31.05.2002. He has to claim gratuity either under the Payment of Gratuity Act, 1972 or under the KSR. If he claims gratuity under the Payment of Gratuity Act, 1972, the amount will be determined under section 4 of the said Act, subject to the maximum amount notified under section 4 (3). If he claims under the KSR, the amount of DCRG will be determined under Rule 68 of the said Rules, subject to the maximum provided therein. He cannot have gratuity under the KSR with the ceiling limit payable under the Payment of Gratuity Act, 1972 and *vice versa*. The gratuity is payable to an employee on the termination of his employment. The gratuity payable to an employee shall not exceed the maximum that is notified under the respective enactments as on the date on which the gratuity becomes payable. Even if it is assumed that the petitioner's claim for gratuity was under the Payment of Gratuity Act, 1972, the maximum amount of gratuity payable under the said Act has to be determined with respect to the date on which the gratuity became payable and not on the date on which sanction

was accorded for payment of DCRG or the date on which the amount was actually disbursed to him. Therefore, there is no merit in the contention of the petitioner that he is entitled to the maximum gratuity of Rs.10,00,000/- as per section 4(3) of the Payment of Gratuity Act, 1972, as amended by Act 15 of 2010.

7. This Court, by Ext.P1 judgment, has made clear that the entitlement of the petitioner to claim interest for the delay in disbursement of DCRG is left open. The petitioner is free to approach the 3rd respondent for interest for the delay in disbursement of DCRG and if the petitioner submits a representation in this regard, the 3rd respondent shall consider the same and pass appropriate orders in accordance with law, within a period of two months from the date of receipt of such representation.

Writ petition is disposed of.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

APPENDIX

PETITIONER EXHIBITS

EXHIBIT P1 TRUE COPY OF THE JUDGMENT DATED 29.02.2012 IN
W.P. (C) NO.8694/2007 OF THIS HONOURABLE COURT

EXHIBIT P2 TRUE COPY OF ORDER NO.HBO 122/ADD. (A)15766/01
DATED 4.4.2012 ISSUED BY THE 3RD RESPONDENT

spc/