**(1998) 02 KL CK 0045**

**In the High Court Of Kerala**

**Case No :** O.P. No. 8684 of 1992

Ayyappan APPELLANT

Vs

Joint Labour Commissioner RESPONDENT

**Date of Decision :** 12-02-1998

**Acts Referred:**

Payment of Gratuity Act, 1972 — Section 4, 4(2), 7

**Citation :** (1999) 2 LLJ 1351

**Hon'ble Judges :** K.A. Abdul Gafoor, J

**Bench :** Single Bench

**Advocate :** V.N. Achutha Kurup, M.S. Radhakrihsnan Nair and B.S. Swathikumar, for the Appellant; L.G. Suresh Babu and Markose Vellappally, for the Respondent

## Judgement

K.A. Abdul Gafoor, J.—The petitioner was in the service of the second respondent, a public sector undertaking owned and controlled by the State of Kerala. He resigned from service. At that time he was entitled for payment of gratuity. The petitioner applied to the controlling authority for payment of the gratuity. The Controlling authority in Ext. P3 granted his claim. His claim was for gratuity at the rate of one month wages for every completed year of service in terms of Clause 9 of Ext. P2, which according to the petitioner covered his conditions of service. Ext. P2 is a Government order revising the salary structure and other conditions of the employees of the second respondent. Clause 9 reads as follows:

"9. Gratuity:- The date of gratuity payable to staff will be enhanced as one month salary for every completed year of service subject to a maximum of Rs. 50,000/- (Rupees fifty thousand only)".

The petitioner claimed the rate of gratuity in terms of the said clause before the controlling authority invoking Section 7 of the Payment of Gratuity Act, 1972. The controlling authority granted his claim even though the second respondent resisted it on the ground that he cannot invoke Section 7 of the Act to claim gratuity payable in terms of the provisions other than the Gratuity Act. There were other contentions as well. Inspite of that the petitioner''s contention was accepted and the gratuity was directed to be granted taking one month''s pay for every completed year. The second respondent filed appeal in terms of Section 7(7) of the Act. The appeal was considered by the appellate authority. The appeal was allowed limiting the gratuity payable to the petitioner at the rate of 15 days'' wages for every completed year. This was on the ground that the petitioner had ceased to be in service not on superannuation, but had resigned from service. It is held by the authority as follow:

"According to the Act also he is entitled only to 15 days wages as gratuity which was received by the respondent. The issue whether there should be discrimination between persons who resign and persons who retire from service in framing Service Rules for the establishment is a matter which is left to the discretion of the management and the appellate authority cannot under the provisions of Gratuity Act interfere in the matter and render a decision. The better terms of gratuity contemplated under the Service Rues is admittedly applicable to persons who retire from service and not to persons who resign. Since the petitioner is one who resigned from service he is only entitled to 15 days wages which he already received. So, there is no question of entitlement of better terms under the Gratuity Act or under the Service Rules".

2. The appellate authority was not correct in directing that it was admitted that the better terms were applicable to persons who retire from service because the basis of the claim of the petitioner itself was Ext. P2 which contain better rates. Clause 9 of Ext. P2 as extracted above raised the rate of gratuity without discriminating the persons who retired from service Or resigned from service. Therefore, the reasons stated by the Tribunal to limit the gratuity payable to the petitioner to 15 days wages for every completed year of service is not correct. The gratuity payable under the Act as per Section 4(2) is as follows:

"For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned."

Better terms are saved by the Act as per Sub-section(5) of the Section 4.

Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer".

3. A reading of the entire provisions of Section 4 makes it clear that gratuity payable under the Act is limited to 15 days wages for every completed year and an employee can claim gratuity from the employer if he is entitled for better terms in accordance with any other better provisions of conditions of service. Therefore, the gratuity in terms of Clause 9 of Ext. Government order providing for one month''s wages for every completed year is not the gratuity payable under the Act.

4. Section 7 of the Act enables an employee to approach the controlling authority

 

for determination of the amount towards gratuity. Section 7 can be invoked only by "a person who is eligible for payment of gratuity under this Act." The gratuity claimed by the petitioner is not under this Act but under Ext. P2. Under the Act the petitioner is entitled only to the rate as mentioned in Sub-section 2 of Section 4 The amount granted in Ext. P4 is equal to that rate. Therefore, limiting of the gratuity payable to the petitioner under the Act to 15 days'' wages for every completed year as contained in Ext. P4 is justified though on a different ground. On that basis, the petitioner cannot challenge the quantum of gratuity directed to be paid in Ext. P4. Therefore, Ext P4 to that extent alone is upheld. But the finding that Ext. P2 is not applicable to the petitioner is set aside and left open.

The petitioner is free to agitate for the balance amount in terms of Ext. P2 before the appropriate forum. Leaving that liberty to the petitioner Original Petition is dismissed confirming Ext P4.

 