

(2026) 02 KL CK 1645

In the High Court Of Kerala

Case No : Writ Appeal Nos. 1745 Of 2021 58 Of 2022

Kerala State Co Operative Bank Ltd. Represented By Its
General Manager

APPELLANT

Vs

P.Sidharthakumar

RESPONDENT

Date of Decision : 06-02-2026

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4(3), 4(5)

Citation : (2026) 02 KL CK 1645

Hon'ble Judges : Sushrut Arvind Dharmadhikari, J;P.V.Balakrishnan, J

Bench : Division Bench

Advocate : Gilbert George Correya, Dr.Abraham P.Meachinkara, M.Meena John

Final Decision : Partly Allowed

Judgement

P.V.Balakrishnan, J

1. These intra-court appeals are filed challenging the judgment dated 19.11.2021 passed by the learned Single Judge in W.P.(C) No.11845/2020. W.A.No.1745/2021 is filed by the respondents 1 and 2 and W.A.No.58 of 2022 is filed by the legal heirs of the petitioner in W.P.(C)No.11845/2020.

2. The parties are hereinafter referred to as in their status in the writ petition, for convenience.

3. The writ petition was filed by the petitioner aggrieved by the non payment of the entire amount of gratuity payable to him under Section 4(5) of the Payment of Gratuity Act (hereinafter referred to as 'the Act' for short). The petitioner joined the service of the first respondent bank on 05.05.1980 and retired from service on 30.04.2017, after completing 37 years of service. After retirement, even though retirement benefits were sanctioned to the petitioner, the gratuity was not paid in full. The petitioner is entitled to an amount of Rs.25,25,399/- towards gratuity under the "Cannanore District Co-operative Central Bank Employees Group Gratuity and Life Assurance Scheme". Initially the first

respondent raised a claim for an amount of Rs.22,84,593/- under the Master Policy No.3839, on behalf of the petitioner, from the 3rd respondent LIC. Accordingly, the 3rd respondent credited the said amount to the account of the first respondent bank and the entire amount was paid to the petitioner, in two installments. At the time of retirement of the petitioner, the gratuity corresponding to DA increased with effect from 01.01.2017 was not received by the petitioner. The said amount was sanctioned subsequently and the first respondent bank, claimed an additional amount of Rs.2,40,806/- from the 3rd respondent, in proportion to the increase in DA. The said amount was also credited to the account of the first respondent, by the LIC on 08.11.2017. But, the first respondent, failed to pay the amount to the petitioner. Later, the 2nd respondent issued Ext.P4 order to the first respondent Bank stating that it has resolved to remit the excess amount received on account of arrears of gratuity of the petitioner corresponding to the DA increase, over and above the existing ceiling limit of 20 Lakhs to the LIC. According to the petitioner, he is entitled to receive the balance amount of Rs.2,40,806/-, with interest. It is in such circumstances, the petitioner approached this Court by filing the afore writ petition seeking the following reliefs:

"b) Issue a writ of Certiorari to quash Exhibit-P4 order issued by the 2nd respondent since it is legally not sustainable.

c) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 3rd respondent LIC to re-credit the balance amount of gratuity amounting to Rs.2,40,806/-, as per Master Policy No.3839 to the account of the 1st respondent bank, in case the said amount is remitted back to the 3rd respondent LIC by the 1st respondent and then to release the same to the petitioner together with interest at the rate of 9% per annum."

Or

In the alternative, commanding the 1st respondent to disburse the balance amount of gratuity amounting to Rs.2,40,806/- as per Master Policy No.3839 together with interest at the rate of 9% per annum, in case the said amount is with the 1st respondent bank.

4. The learned Single Judge by a common judgment dated 19.11.2021 passed in this case and in W.P.(C)No.11877/2020 allowed the writ petition in the following manner:

"Respondent bank is directed to remit the amount of Rs.2,40,806/- and Rs.19,91,944/- to the respective petitioners after making request to the LIC to whom they refunded back. Let the request is made to the LIC within a period of two weeks from today. Thereafter, the learned counsel representing the LIC submits that they would remit the amount as expeditiously as possible within a period of another one month and thereafter, the bank would disburse the same to the petitioners within another period of 15 days i.e., total period of 45 days. In case, the aforementioned amount after completion of the formality is not

remitted by the bank to the petitioners, it will entail interest as provided under the Payment of Gratuity Act.”

5. Heard Adv. Meena John, the learned counsel appearing for the legal heirs of the writ petitioner, Adv. Gilbert George Correya, the learned counsel appearing for the bank and Adv. Abraham P.Meachinkara, the learned standing counsel appearing for the LIC.

6. The learned counsel appearing for the legal heirs of the writ petitioner submitted that even though the learned single judge has ordered the bank to disburse the amount of Rs.2,40,806/-, after getting the amount from LIC, no amount towards interest has been granted. She also submitted that the writ petitioner had retired from service as early as in April, 2017 and since, the money legally due to him has not been paid by the bank, it is liable to pay interest. She further contended that the writ petitioner is also eligible for an additional gratuity of Rs.3,83,014/- as per pay revision, which came into effect from 01.04.2017 and the learned single judge neither accepted the additional documents produced to support this contention nor allowed this claim.

7. Per contra, the learned counsel for the bank submitted that even though Exts.R1(a), as varied by Ext.R1(b), is applicable to the employees, including the writ petitioner in this case, the writ petitioner is entitled only to the gratuity fixed as per Section 4(3) of the Act. According to the learned counsel, since the Master Policy specifically states that it is subject to the Gratuity Act, the employees are only entitled to the benefits under the Act i.e., for an amount of Rs.20 Lakhs, which is the ceiling fixed under the Act. He argued that, it is considering the fact that the petitioner has already been paid an amount in excess of Rs.20 Lakhs, the amount of Rs.2,40,806/- was remitted back to the LIC. He also argued that at the time when the writ petitioner retired from service, it was an Administrative Committee that was at the helm of affairs in the bank and during that period, the employees themselves had filed the claim form before the LIC, claiming exaggerated amounts, leading to the LIC remitting the amount to the bank. He submitted that even if it is otherwise so, the amount which has been paid as gratuity to the petitioner, is beyond the maximum of 20 months salary, as prescribed in clause 8 of Ext.R1(b) policy, and therefore, the impugned judgment cannot be sustained. He also submitted that the writ petitioner has executed Annexure II (in WA No.1745/2021) letter of Indemnity, in favour of the bank to make good all the losses, if any, incurred by the bank due to withdrawal of gratuity claim in excess of the limit prescribed by clause 8 of Ext.R1(b) Scheme and therefore, the bank is entitled to recover the excess gratuity paid.

8. The learned counsel for the LIC submitted that the LIC has no role in computing the amount of gratuity to which the employees are entitled and that it will only pay the amount on the basis of the demand made by the Bank. He also submitted that it is the bank that calculates the amount due to each of the employees and intimates the same to the LIC and the LIC will only make the payment and nothing more. He further submitted that in the instant case, the

LIC has paid an amount of Rs.2,40,806/-, apart from a sum of Rs.22,84,593/- to the bank and it has remitted back Rs.2,40,806/-, stating that the same is excess amount.

9. In the instant case, the writ petitioner has retired from service on 30.04.2017. It is an admitted fact that the bank has paid the writ petitioner an amount of Rs.22,84,593/- towards gratuity, immediately on his retirement. It is also an admitted fact that thereafter, consequent to the revision of DA of employees with effect from 01.01.2017, the bank has raised a claim of Rs.2,40,806/- before the LIC, as gratuity arrears to be paid to the petitioner and that the LIC has remitted the said amount also in the account of the bank. It is not in dispute, that the bank has not released the said amount to the petitioner and had remitted it back to the LIC, by stating that it is excess amount. The contention of the learned counsel for the bank that they are only liable to pay gratuity, as fixed under Section 4 (3) of the Act and since, an amount in excess of Rs.20 Lakhs, as stipulated therein, has already been paid to the petitioner, the amount of Rs.2,40,806/- has been remitted back to the LIC, does not have any legs to stand. This is because, as on the date of retirement of the petitioner, the amount of gratuity which the bank was liable to pay, as per Section 4(3) of the Act, was only Rs.10 Lakhs and not Rs.20 Lakhs. There is no explanation forthcoming from the side of the bank, as to on what basis the sum of Rs. 20 Lakhs and more, was paid to the petitioner.

10. Be that as it may, it is the contention of the writ petitioner that, since Ext.R1(b) Group Gratuity Scheme provides better gratuity than prescribed under Section 4(2) of the Act, the scheme falls under the purview of Section 4(5) of the Act and, therefore, he is entitled to the benefit of the entire amount paid by LIC to the bank. On the other hand, the case of the bank is that even if gratuity is calculated as per the terms of Ext.R1(b) Scheme, the writ petitioner will not be entitled to the amount claimed, since he has already received excess amount than that. It is his contention that going by Clause 8 of Ext.R1(b), the maximum gratuity which the writ petitioner is entitled is 20 months salary and the amount which has already been paid, is more than that.

11. A perusal of Ext.R1(b) shows that it does not in any manner restrict the liability to pay gratuity to the amount prescribed under Section 4(3) of the Act. On the other hand, Clause 8 of the Scheme would show that the LIC, upon retirement of an employee, is liable to pay a gratuity equal to 15 days salary for each completed year of service, subject to a maximum of 20 months salary. A Full Bench of this Court in Chandrasekharan Nair G. and others v. Kerala State Co-operative Agricultural and Rural Development Bank Ltd. and others [2017 (5) KHC 15] [which was confirmed by the Hon'ble Apex Court in SLP(C)No.009439-009444/2018 dated 11.05.2018] has categorically held that any benefit in excess of the gratuity amount prescribed, covered by a contract of insurance availed by the employer, will also go to the employee, since the contract of insurance will fall within the ambit of Section 4(5) of the Act. The

relevant portion of the dictum laid down in Chandrasekharan Nair's case (supra) is extracted below.

"3. The liability to pay gratuity to an employee is always on the employer under S.4(2) of the Central Act and is at the rate of fifteen days' wages for every completed year of service or part thereof in excess of six months. This does not however affect the right of the employee to receive better terms of gratuity under any award or agreement or contract with the employer under S.4(5) of the Central Act. The employee need not necessarily be an eo- nomine party to the award or agreement or contract which could be entered into by any one duly authorised by him. S.4(5) of the Central Act has been widely couched to take in service conditions regulating the terms of gratuity to which the employee is entitled to receive.".....

"5. The liability to pay gratuity does not get shifted to the insurer by the compulsory insurance and the effect is only that the maturity value of the master policy would go to the credit of the dues of the employee. Any amount in excess of the gratuity due would also go to the employee since the contract of insurance would fall within the ambit of S.4(5) of the Central Act. Any deficit in the amount due as gratuity to the employee after payment by the insurer has to be met by the employer only as the liability squarely rests on him under S.4(2) of the Central Act. The insurer cannot be made liable to pay any amount in excess of the maturity value of the master policy as the same would be dependent on the premium paid to him. The compulsory insurance under S.4A of the Central Act is only to facilitate the employer to discharge his liability and the premium paid is part of the wages only. Of course the wording of the second proviso to R.59(iii) of the Rules give rise to a doubt that the employee would be pinned down to the amount of gratuity specified in the Central Act. Such an interpretation would render S.4(5) of the Central Act otiose whereunder the employee has a right to receive better terms of gratuity under any award or agreement or contract with the employer. The provisions of the Central Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other enactment or instrument or contract."

If so, in the light of the dictum laid down in Chandrasekharan Nair's case, if the amount arrived at by calculating the gratuity as per clause 8 of Ext.R1(b) is more than the amount already paid to the writ petitioner, definitely he will be entitled to that amount. In the instant case, it can be seen that the amount that has been paid to the petitioner is not on the basis of the Payment of Gratuity Act. Ext.R3(A)1 also does not show that the claim has been made on the basis of a calculation as stipulated in Ext.R(1)(b) Scheme. It is only if a calculation is made as per the terms of Ext.R1(b) policy, it can be decided whether it provides better terms of gratuity than under the Act.

12. Therefore, considering all the afore facts and circumstances, we are of the view that these writ appeals can be allowed by giving a direction to the 1st

respondent Bank to calculate the gratuity of the writ petitioner in terms of Clause 8 of Ext.R1(b) gratuity scheme, and if the amount thus calculated is more than the amount, which has been paid to the writ petitioner, make a claim before the LIC to disburse the excess amount. We are also of the view that thereafter, the bank can be directed to disburse the excess amount thus received from LIC to the legal heirs of the writ petitioner, along with interest at the rate of 9% per annum from the date of retirement of the writ petitioner, till payment. It is made clear that, at the time of computation of the gratuity as directed afore, the bank shall also take into consideration the pay revision benefits which are applicable to the writ petitioner.

13. In the result, these writ appeals are allowed in part as follows;

1. The judgment dated 19.11.2021 passed by the learned Single Judge in W.P.(C)No.11845 of 2020 is set aside.

2. W.P.(C)No.11845 of 2020 is allowed in part as follows;

a) The 1st respondent Bank is directed to compute the gratuity of the writ petitioner as per Clause 8 of Ext.R1(b) Gratuity Scheme, within a period of one month from the date of receipt of a certified copy of this judgment, by also taking into account the pay revision benefits available to him;

b) If the amount thus arrived at is in excess of the amount already paid to the writ petitioner, the 1st respondent Bank shall submit a claim to the 3rd respondent LIC for the excess amount, within a further period of ten days;

c) On receipt of the claim from the 1st respondent bank for excess amount, the 3rd respondent LIC shall pay the said amount to the 1st respondent bank within a period of two weeks therefrom;

d) Thereafter, the 1st respondent bank shall disburse the excess amount thus received from LIC, to the appellants in WA No.58 of 2022 with 9% interest p.a. from the date of retirement of the writ petitioner, till payment, within a period of two weeks;

e) In case it is found that the amount calculated as per Clause 8 of Ext.R1(b) is less than the amount already

disbursed to the writ petitioner, the 1st respondent bank will not be entitled to recover the excess amount from the appellants in W.A.No.58 of 2022;

f) The 1st respondent bank shall also furnish a copy of the calculation statement prepared by it as ordered in Clause 2(a) above to the appellants in W.A.No.58/2022 within a period of one month from the date of receipt of a certified copy of this judgment;

g) In case the appellants in W.A.No.58/2022 has any dispute regarding the computation of gratuity amount by the 1st respondent bank, they will be at liberty to approach the competent authority under Section 7 of the Gratuity Act

to get their grievance redressed, and the said authority shall take a decision on it as per law.