
(1997) 06 KL CK 0010
In the High Court Of Kerala
Case No : O.P. No. 4870 of 1991

Raveendranatha Prabhu

APPELLANT

Vs

Rajappan

RESPONDENT

Date of Decision : 25-06-1997

Acts Referred:

Payment of Gratuity Act, 1972 — Section 4

Citation : (1998) 1 ILR (Ker) 533 : (1998) 1 LLJ 204

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : R. Harikrishanan, for the Appellant; P.K. Santhamma, G.P., V.N. Achuttha Kurup and B.S. Sawthi Kumar, for the Respondent

Final Decision : Dismissed

Judgement

P.A. Mohammed, J.—The subject matter of this writ petition is the payment of gratuity under the provisions of the Payment of Gratuity Act, 1972. The petitioner is the employer and the 1st respondent is the employee. By Ext. P6, the Controlling Authority under the Payment of Gratuity Act found that the employee is entitled to a gratuity of Rs. 14,400/-. As against the said order, the petitioner filed an appeal before the third respondent, the Appellate Authority under the Payment of Gratuity Act. The third respondent by Ex.P8 order dismissed the appeal in confirmation of the order of the Controlling Authority. Exts. P6 and P8 orders are under challenge in this writ petition.

2. The counsel for the petitioner submitted that the Controlling Authority has no jurisdiction to entertain the application which was covered by a settlement between the management and the union. Ext. P3 is the said settlement. As per Ext. P3 settlement the union and the management agreed to pay Rs. 1000/- as service benefits to the respondent and a job for the respondent's son in the establishment. The definite case of the first respondent is that he had not given any consent for such a settlement being entered into between the management and the union. It is pointed out that his son was employed in the establishment

even prior to his retirement. The question is whether Ext. P3 settlement can be acted upon by the Controlling Authority or by the Appellate Authority. Section 4 of the Payment of Gratuity Act, 1972 provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years. Sub-section (5) of the said Section prescribed that nothing contained 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. This is a beneficial provision which can be invoked only by the employee and not by the employer. The employer has no right to insist that the employee must accept the terms of gratuity under the agreement. It is for the employee to decide whether the terms of gratuity under the agreement is beneficial to him. If the agreement provides any better terms of gratuity in the opinion of the employee, he can opt to such agreement. In the present case, the employee says that he has no knowledge of such agreement and even if there is any such agreement, it is not beneficial to him. Therefore, I do not see any substance in the argument advanced by the counsel. There is no reason to interfere with the conclusions of the Controlling Authority as well as the Appellate Authority. The Original Petition is accordingly dismissed.

3. The counsel for the respondent submitted that subsequent to the filing of this writ petition the 1st respondent died and his legal representatives came on record as additional Respondents 4 to 10. Therefore, additional Respondents 4 to 10 are entitled to receive the gratuity amount as per Ext. P6. While disbursing the amount, if any amount has been deposited by petitioner pursuant to the interim order of this Court, same shall be adjusted.