

(2005) 05 KL CK 0019
In the High Court Of Kerala
Case No : O.P. No. 21589 of 1997

Retnavalli

APPELLANT

Vs

Ambalapadu Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 16-05-2005

Acts Referred:

Income Tax Act, 1961 — Section 2

Payment of Gratuity Act, 1972 — Section 4, 4(2), 4(3), 4(5), 4A(2)

Citation : (2005) 106 FLR 1182 : (2005) 3 KLT 320 : (2005) 3 LLJ 379

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : K.G. Balasubramanian, for the Appellant; A.S. Dileep, Ajith R. Kartha and S. Dileep, Government Pleader, for the Respondent

Judgement

S. Siri Jagan, J.—A very important question affecting the employees of the Co-operative Societies across the State of Kerala arises in this case. The question is whether the gratuity payable to retired employees or legal heirs of deceased employees of Co-operative Societies should be restricted to the maximum prescribed u/s 4(3) of the Payment of Gratuity Act, 1972, (for short "the Act"), Rule 59 of the Kerala Co-operative Societies Rules, 1969 (hereinafter referred to as "the Rules") and the bye-laws framed under the said Rule 59, even in cases where the Societies have entered into arrangement with the L.I.C. to have their liability for payment of gratuity to its employees insured as per the "Employees Group Gratuity Life Assurance Scheme" of the L.I.C., as per which more amounts than the statutory maximum payable as per Section 4(3) of the Payment of Gratuity Act, Rule 59 and bye-laws of the society are payable to the employees.

2. The facts of the case fall in a narrow compass. According to the petitioners, the 1st respondent-Society had constituted a Gratuity Fund Trust under the Payment of Gratuity Act in order to ensure payment of gratuity to its employees as per the Act. The Society entered into an agreement with the L.I.C. of India under which the L.I.C. of India assured payment of gratuity to the employees of

the Society as per the master policy, two pages of which are produced as Ext.P1. The petitioners submit that by Ext.P1, the L.I.C. has taken over the liability of the Society to pay gratuity to its employees by paying the sum assured by Ext.P1, to retiring employees or legal heirs of deceased employees. In Ext.P1, the sum assured as per the policy is described thus:

"B. Assurance and Premiums:--

1. Sum assured : The sum assured under the Pure Endowment Assurance shall be an amount equal to 15 days salary of the member as on the entry date or the annual renewal date, as the case may be, for each year of service up to the Normal Retirement date subject to the maximum of 20 month's salary".

3. One P.K. Krishnan retired as the Secretary of the 1st respondent-- Society on 18.2.1995 and he expired on 29.3.1996. His last drawn salary was Rs. 7380/- per month. He had continuous service of 29 years at the time of retirement. Calculated in accordance with the terms of Ext.P1 policy, the total amount of gratuity due to him was Rs. 1,23,473/- ($7380 \times 15/26 \times 29$) which is less than the maximum prescribed as per Ext.P1. Out of this, Rs. 75,000/- was paid to the said Krishnan on his retirement. After his death, his legal heirs, who are the petitioners in this Original Petition, were paid another sum of Rs. 25,000/- making a total of Rs. 1,00,000/- paid as gratuity. The petitioners now claim the balance amount due to them as per Ext.P1 policy. According to the petitioners, although at the relevant time, the maximum amount of gratuity payable as per Section 4(3) of the Act, at it stood then, was Rs. 1 lakh, Ext.P1 represented a contract for payment of better terms of gratuity which is saved by Section 4(5) of the Act. On receipt of representations from the petitioners, the 1st respondent sought clarification from respondents 2 and 3 who advised them that no amount in excess of the maximum described under the Act can be paid to a retired employee as gratuity, apparently based on Ext.R3(d) communication from the Registrar of Co-operative Societies.

4. The 3rd respondent has filed a counter affidavit in the O.P. According to the 3rd respondent, under Rule 59 of the Kerala Co-operative Societies Rules, which is framed u/s 80(3) of the Kerala Co-operative Societies Act, 1969, a Society cannot make bye-laws providing for gratuity exceeding fifteen month's pay. As per communication dt. 6.7.1995 issued by the Registrar of Co-operative Societies, Thiruvananthapuram, employees of Co-operative Societies shall be paid gratuity up to the maximum of Rs. 1 lakh in accordance with amended Section 4(3) of the Act. They also contended that the deceased Krishnan is not entitled to gratuity as per Ext.P1 since the said Krishnan is not a party to the said agreement and, therefore, he is not entitled to the benefit of Section 4(5) of the Act based on Ext.P1.

5. Based on the pleadings, the following questions arise for consideration in this case.

(a) Whether notwithstanding Section 4(5) of the Payment of Gratuity Act, 1972

the Government of Kerala can, in exercise of the powers conferred on it u/s 80(3) of the Go-operative Societies Act, 1969, make rules prescribing the maximum amount of gratuity payable by a Co-operative Society to its employee?

(b) Whether circulars issued by the Registrar Co-operative Societies can be regarded as rules with reference to Section 80(3)?

(c) Whether Ext.P1 represents a contract or agreement for payment of better terms of gratuity between the employer and employee as provided u/s 4(5) of the Act?

(d) Whether the employee is entitled to receive higher amount of gratuity as per Ext.P1 notwithstanding the fact that he is not a party to Ext.P1?

(e) Whether, notwithstanding the proviso to Rule 59 of the Kerala Co-operative Societies Rules, 1969, and the bye-laws framed by the society in respect thereof, an employee is entitled to get gratuity as per Ext.P1 paid by the L.I.C. in excess of the limits prescribed under the said rules and the bye-laws?

6. I shall consider questions (a) and (b) together. Section 4(5) of the Act is a saving clause whereby the right of an employee to receive better terms of gratuity under any award, agreement or contract with the employer is saved, notwithstanding the maximum limit prescribed by Section 4(3) of the Act. Section 4(5) comes into operation only if there is an award, contract or agreement entitling the employee to get better terms of gratuity. In fact, as far as the limit of gratuity is concerned, only if the maximum fixed by the employer is higher than the statutory maximum prescribed u/s 4(3), it becomes better terms of gratuity. In the absence of the employer fixing a maximum higher than the statutory maximum, Section 4(5) does not come into play at all with regard to fixation of higher maximum. Therefore, there is nothing in the Act prohibiting prescription of a maximum amount of gratuity payable by an employer, by any statutory rule or bye-law as in the case of the Kerala Co-operative Societies Act, Rules or bye-laws framed by a Society provided the maximum is not below the statutory maximum prescribed u/s 4(3) of the Act. Therefore, there is nothing illegal in any statutory provision which restricts the right of an employee of a Co-operative Society to get gratuity only at the rates prescribed by Section 4(2) of the Act or at a maximum rate higher than the maximum prescribed under the Act, provided the authority making such restriction has the power to do so. Therefore, if the Government has power to require a Society to make bye-laws regarding fixation of maximum limit of gratuity only at the maximum prescribed by the Act or at a specified higher maximum than the maximum fixed by the Act, such power cannot be denied to the Government. In respect of Cooperative Societies in Kerala, this power in the Government can be traced to Section 80(3) of the Kerala Co-operative Societies Act, 1969. Section 80(3) reads thus:

"80(3). The Government shall, in consultation with the State Co-operative Union, make rules either prospectively or retrospectively regulating the qualification, remuneration, allowances and other conditions of service of the officers and

servants of the different classes of Societies specified in Sub-section 1".

7. Right to receive gratuity undoubtedly being a condition of service, albeit statutory, the power of the Government to make rules in respect thereof under this Section cannot be disputed, the only restriction being that the same shall not be inconsistent with the Payment of Gratuity Act, 1972, the latter being a special Central statute dealing with the payment of gratuity specifically. But, that does not mean that the Registrar of Co-operative Societies can exercise those powers by issuing circulars on the subject. In fact, in exercise of powers u/s 80(3), the Government of Kerala has framed Rule 59 of the Kerala Co-operative Societies Rules, 1969. Rule 59 reads thus:

59. Gratuity:-- Every society shall make in its bye-laws provision for payment of gratuity to its employees and frame regulations for its administration. Among other matters such regulations shall provide for the following --

(i) all monthly paid employee on the permanent establishment shall be eligible for gratuity;

(ii) service rendered by employees must be continuous and satisfactory;

(iii) when an employee who has got in at least 5 years satisfactory service is retired voluntarily from service or if he is permanently disabled while in service or if he dies while in service, the society shall pay to him or to his legal heirs as the case may be a gratuity not exceeding half months pay for every completed year of service;

Provided that in no case shall the gratuity exceed fifteen months pay".

Under the proviso to Rule 59, in no case shall the gratuity provided under the bye-laws made by the Society exceed fifteen months" pay.

8. Therefore, any circular issued by the Registrar of Co-operative Societies, contrary to Rule 59 is not valid in the eye of law. If at all the Registrar can issue any circular in this regard, the same shall be in consonance with Rule 59. Therefore, Exts. P6 and R3(d) which limit amount of gratuity payable to employees of Co-operative Societies to Rs. 1 lakh as provided in the Act is contrary to Rule 59 which gives liberty to the Societies to frame bye-laws providing for payment of gratuity not exceeding fifteen months" pay and, therefore, liable to be quashed in so far as it restricts payment of gratuity to co-operative employees to the maximum prescribed under the Payment of Gratuity Act, without reference to bye-laws framed by the Society. I do so.

9. Counsel for the petitioners relied on a Division Bench decision of this Court in Anappara Karinkallu Thozhilali Sahayam Co-op. Society Ltd. Vs. Many, , in support of his contention that limiting the maximum gratuity payable as Rs. 1 lakh, when Section 4(5) of the Payment of Gratuity Act saves the right to receive better terms of gratuity as per contract, is overriding the provisions of the Act and hence, unsustainable. The said decision is not applicable to the facts of this

case. In that decision, the bye-law of the society contained a provision to the effect that, for the purpose of computing gratuity, one should have worked for 240 days in an year. This Court in the above decision, held that such a provision is not beneficial or better than what is contained in the Act and, therefore, the provision of the Act will override the bye-law. In the present case, the bye-law, if it restricts the maximum amount of gratuity payable by it to its employees to the maximum prescribed u/s 4(3) of the Payment of Gratuity Act, does not scale down or restrict any of the benefits granted by the Act, but only provides for the maximum amount of gratuity which is the same as that provided in Payment of Gratuity Act itself and, therefore, does not run counter to the Act. Further, such a bye-law is in consonance with Rule 59 of the Kerala Co-operative Societies Rules framed in exercise of powers conferred on the Government u/s 80(3) of the Kerala Co-operative Societies Act. If the Government has power to require the Societies to limit payment of gratuity to the maximum prescribed under the Act or to any specific sum above the maximum prescribed, doing so does not amount to overriding the provisions of the Act. In this case, Section 80(3) of the Act confers a specific power on the Government to do so, in exercise of which Rule 59 has been framed. As such, Rule 59 does not suffer from any infirmity and consequently, the bye-laws framed by societies, if any, which restricts payment of gratuity to its employees at or below the maximum prescribed under the proviso to Rule 59, cannot be said to be against the provisions of the Payment of Gratuity Act, provided the same is above the minimum gratuity fixed by the Payment of Gratuity Act.

10. The other three questions can also be considered together. Ext. P1 is the relevant pages of the contract of insurance between the 1st respondent-Society and L.I.C. Ext.P1 does not mention "gratuity" except in the name of the Scheme under which the policy is issued, namely, "AMBALAKKAD SERVICE CO-OPERATIVE BANK LTD. Employees Group Gratuity Scheme. However, it is not disputed before me that as per the said Scheme, the L.I.C. has assured payment of the gratuity to all employees of the society as per Ext.P1 policy. As per the counter affidavit of the 3rd respondent, the Registrar of Co-operative Societies has encouraged all Societies to take advantage of the Scheme offered by the L.I.C. of India by various circulars, true copies of which are produced as Exts. R3(a) to R3(c) and R3(e). It is also not disputed that payment as per the policy to the employees discharges the Society from its liability to pay gratuity to its employees under the Payment of Gratuity Act. As per Ext.R3(a), it has been made obligatory on the part of the Co-operative Societies in Kerala to establish a fund for payment of gratuity to their employees, and the contributions payable by the Societies at the minimum rates prescribed in the rules have to be charged to the profit and loss account of the Societies.

11. By Ext. R3(b), the Registrar has advised all Societies to take advantage of the Group Gratuity-cum-Life Assurance Scheme offered by the Life Insurance Corporation of India in respect of payment of gratuity to employees of the Societies. The advantage of the Scheme as stated in Ext.R3(b) are as follows:

"The Life Insurance Corporation of India has a scheme called "Group Gratuity-cum-Life Assurance Scheme under which the Corporation is prepared to take over the gratuity liability of the Societies and at the same time, insure the lives of all the employees of the Societies provided the Societies agree to hand over to the L.I.C. annually the amount that they normally are expected to set apart for creating a gratuity fund from gratuity is to be paid to the employees.

Under the existing rules, every employee is entitled to gratuity not exceeding half month's pay for every completed year of service subject to a maximum of 15 months' pay. Under the Group Gratuity-cum-Life Assurance Scheme of the L.I.C., the Society can not only build up a reserve to meet this liability but also be able to pay to the dependent of the employee in the event of his death before retirement, 15 months' salary that the employee was drawing on the date of his death, irrespective of the length of service put in by the employee. In other words, the employees lives got insured to the extent of 15 times the salary they will be drawing throughout their service without paying for it from their pockets. So far as the Societies are concerned, the entire gratuity liability will be transferred to the Life Insurance Corporation under the Scheme. In addition, the net cost to the Society under this Scheme will be far less than the liability of the Society, if it meets the gratuity liability by itself."

The most significant advantage of the Scheme is again reiterated in Ext.R3(c) issued by the Registrar as thus:

"The most significant advantage from the employees point of view would be that the liability for payment of gratuity is taken over by Life Insurance Corporation of India, in consideration of payment of premium and the employer would be relieved of the difficulties about providing for gratuity liability".

Thus, it is abundantly clear that Ext.P1 represents a scheme for the benefit of the employees of the 1st respondent-Society to enable them to get benefits better than what they would have got as gratuity paid by the Society directly, pursuant to the bye-laws of the Society, even if it cannot be termed as better terms of gratuity under any award, contract or agreement.

12. Now, the question is whether the employee is entitled to receive the higher gratuity as per Ext.P1 notwithstanding the fact that the employee is not a party to Ext.P1. As I have already stated in the earlier part of this judgment, Ext.P1 is an incomplete copy of the policy. Even from the same, some of the salient features of the policy are evident. Condition No. 1 of the policy reads thus:

"1. In this Policy whereas the context so admits, the masculine shall include the feminine and the following expressions shall, unless repugnant to the context, have the following meanings:

(i) The Rules shall mean the Rules of the Scheme annexed to the Trust Deed including any alterations or amendments thereof approved by the Corporation.

(ii)(a) "Employees" shall mean all employees of the Employer other than

personal and domestic servants and shall include a director who is a wholetime bona fide employee of the Employer and who does not own beneficially shareholding carrying more than 5% voting rights in the company.

(b) "Employee" shall mean an employee participating in a Gratuity Fund but does not include a personal or domestic servant.

(iii) "Eligible Employees" shall mean Employees who are or shall become eligible to the benefits of this policy as more particularly set forth in Part I of the Schedule hereto.

(iv) "Members" shall mean persons who as Eligible Employees become entitled to benefits of this policy and shall include any such person so long but only so long as he continues to be entitled to any benefits hereunder."

These provisions should clearly indicate that the policy document is envisaged as part of a Trust Deed, with the employees as the beneficiaries of the Trust. The Society, with the help of the L.I.C. created a Trust Fund into which the Society pays the amount payable as gratuity to each employee as per the bye-laws of the Society in the form of the premium payable in respect of the policy. L.I.C. administers the Trust Fund for the benefit of the employees and as and when a beneficiary-employee dies or retires from service, amounts are paid out of the Trust Fund in accordance with the terms and conditions of the policy which includes the Rules of the Scheme annexed to the Trust Deed, which payment absolves the Society from its liability to pay gratuity under the Payment of Gratuity Act and the bye-laws to its employees. The law relating to Trusts does not compulsorily require the beneficiary to be a necessary party to the Trust Deed creating the Trust. Hence the employees who are the beneficiaries of the Trust cannot be deprived of the benefits arising from the Trust on the ground that the employees are not parties to Ext.P1 policy document.

13. The last question arising for consideration is whether the proviso to Rule 59 of the Kerala Co-operative Societies Rules, 1969 and the bye-laws of the Society framed thereunder prohibit payment to the employees from the Trust Fund, amounts in excess of 15 months' wages towards gratuity or in excess of the limit prescribed under the bye-laws. As is clear from Exts.P1, R3 (a) to R3)(c) and R3(e), the Scheme evolved by the L.I.C. envisages creation of a Trust Fund into which the Society pays the amounts due to each employee by way of gratuity only at the rates permitted by Rule 59 and the bye-laws of the Society, which forms the Trust Fund. By so paying, the Society transfers its liability to pay gratuity to its employees, which liability is taken over by the L.I.C. Such payment is perfectly in accord with Rule 59 and the bye-laws of the Society. This Trust Fund is administered by the L.I.C. to the best advantage of the employees and as and when the policy matures in respect of a particular beneficiary-employee, maturity amount is paid out of the Trust Fund as provided in Ext.P1 policy. This Scheme is envisaged in such a way that even the dependants of an employee who dies without becoming eligible for gratuity, will become entitled to minimum

of 15 months" salary which the employee was drawing at the time of his death, irrespective of the length of service of the employee. Therefore, this Scheme is framed as a welfare measure which does not affect the restrictions imposed by Rule 59 and the bye-laws of the Society in respect of the maximum gratuity payable by the Society to an employee. This is not intended to enrich the Society's coffers by appropriating the amount in excess of the maximum gratuity as per the bye-laws of the Society, out of the amount paid by the L.I.C. in accordance with Ext.P1 policy. If that is to be done, that would amount to an unjust enrichment by the Society which is not envisaged by the Scheme and the Trust Deed under which Ext. P1 policy is issued. If such a stand of the respondent is endorsed, the payment as per the policy can be denied even to an employee who dies before attaining 5 years" continuous service, on the ground that no gratuity is payable to employees who does not put in 5 years" continuous service as per Section 4 of the Act, and appropriate that amount to itself. This is all the more so because for payment of gratuity to its employees as per Ext.P1 policy, the Society does not incur any amount in excess of what is provided either under the bye-laws of the Society or Rule 59 of the Kerala Co-operative Societies Rules.

14. It is pertinent to note here that this was exactly the intention of the Government also while encouraging Co-operative Societies to subscribe to the "Group Gratuity-cum-Life Assurance Scheme" of the L.I.C., which intention is gatherable from Ext.R3(e) communication No. EM(2) 43703/95 dt. 24.7.1995 on the subject from the Registrar of Co-operative Societies to the Joint Registrar of Co-operative Societies, Palakkad with copies to all Deputy Registrars (Audit). The last paragraph of Ext.R3(e) reads thus:

"Even if the bye-laws of a Society provides for lesser amount of gratuity than that provides (sic) under Payment of Gratuity Act or on same (sic) other arrangements like Group Gratuity-cum-Life Assurance Scheme, the employees concerned are eligible for the amount so received from the insurance authorities towards gratuity provided the insurance premium paid by the Society against the employee is in accordance with the calculation of the amount which is liable to be paid to (sic) at the time of retirement as per the Payment of Gratuity Act."

15. In this connection, it may be noted that the law maker also wanted, not only Co-operative Societies but also every employer in the Country, to whom the Payment of Gratuity Act is applicable, to compulsorily subscribe to such Schemes of the L.I.C. or other prescribed insurer for insuring his liability for payment of gratuity to his employees, which is clear from Section 4A of the Payment of Gratuity Act, 1972. Section 4A reads thus:

"4A. Compulsory insurance:-- (1) With effect from such date as may be notified by the appropriate Government in this behalf, every employer, other than an employer or an establishment belonging to, or under the control of the Central Government or a State Government shall, subject to the provisions of Sub-section (2), obtain an insurance in the manner prescribed, for his liability for

payment towards the gratuity under this Act, from the Life Insurance Corporation of India established under the Life Insurance Corporation of India Act, 1956 (31 of 1956) or any other prescribed insurer:

Provided that different dates may be appointed for different establishments or class of establishments or for different areas.

(2) The appropriate Government may, subject to such conditions as may be prescribed, exempt every employer who had already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement, and every employer employing five hundred or more persons who establishes an approved gratuity fund in the manner prescribed from the provisions of Sub-section (1).

(3) For the purpose of effectively implementing the provisions of this section, every employer shall within such time as may be prescribed get his establishment registered with the controlling authority in the prescribed manner and no employer shall be registered under the provisions of this Section unless he has taken an insurance referred to in Sub-section (1) or has established an approved gratuity fund referred to in Sub-section (2).

(4) The appropriate Government may, by notification, make rules to give effect to the provisions of this section and such rules may provide for the composition of the Board of Trustees of the approved gratuity fund and for the recovery by the controlling authority of the amount of the gratuity payable to an employee from the Life Insurance Corporation of India or any other insurer with whom an insurance has been taken under Sub-section (1), or as the case may be, the Board of Trustees of the approved gratuity fund.

(5) Where an employer fails to make any payment by way of premium to the insurance referred to in Sub-section (1) or by way of contribution to an approved gratuity fund referred to in Sub-section (2), he shall be liable to pay the amount of gratuity due under this Act (including interest, if any, for delayed payments) forthwith to the controlling authority.

(6) Whoever contravenes the provisions of Sub-section (5) shall be punishable with fine which may extend to ten thousand rupees and in the case of a continuing offence with a further fine which may extend to one thousand rupees for each day during which the offence continues.

Explanation:-- In this section, "approved gratuity fund" shall have the same meaning as in Clause (5) of Section 2 of the Income Tax Act, 1961 (43 of 1961)."

This Section was inserted in the Act by Act No. 22 of 1987 with effect from 1.10.1987 giving liberty to the appropriate Government to notify the date of coming into effect of the said Section. But, alas, the Government of Kerala does not appear to have notified the commencement of this Section in the State of Kerala. The fact that Exts.R3(a) to R3(c) and R3(e) issued in 1995 also do not refer to the adoption of the Scheme of the L.I.C. as compulsory also would

suggest that Section 4A has not been notified for commencement in the State of Kerala. It is unfortunate that successive Governments, which proclaimed themselves to be committed to the upliftment of the working class, have not thought it fit to bestow their attention to such an important but simple matter which provides for better terms of gratuity to employees without any corresponding financial burden on the employer. It is sad that such a progressive and beneficial legislation is given scant attention although there is absolutely no financial commitment to the Government in respect of such subordinate legislation. Further obtaining such insurance will effectively reduce the disputes between the employees and employers regarding gratuity and consequent litigation, considerably relieving the designated controlling authorities and appellate authorities under the Act of considerable workload in that regard.

16. The long and short of the above discussion is that payment of amounts by the L.I.C. out of the Trust Fund as per Ext.P1 policy to the employees of the Society or their legal heirs does not in any way violate either Rule 59 of the Kerala Co-operative Societies Rules, 1969 or the bye-laws of the Society, if any. The amount payable as per Ext.P1 policy is the amount belonging to the employee and the Society has no legal or moral right to withhold any part of it, citing Rule 59, bye-laws of the Society or the limit prescribed by the Payment of Gratuity Act, 1972. The result of these findings is that the 1st respondent-Society is bound to pass on the entire amount paid by the L.I.C. pursuant to Ext.P1, in respect of the gratuity liability of the Society towards each employee, taken over by the L.I.C. in full, without withholding any amount therefrom, even if it is in excess of the amount prescribed as per Rule 59 or the bye-laws of the Society.

17. It follows that the petitioners in this Original Petition are entitled to receive the additional amount of Rs. 23,473/- or such a sum as calculated as per Ext.P1, in addition to Rs. 1 lakh already paid towards the amounts due to late P.K. Krishnan in accordance with Ext.P1 policy. Since the petitioners were unjustly deprived of the use of their money which was in use by the 1st respondent, the 1st respondent will also pay to the petitioners interest on the said amount at the rate of 6% per annum from the date they received the money from the L.I.C. Respondents 2 and 3 are directed to see that the 1st respondent pays the said amount within two weeks from the date of receipt of a copy of this judgment. However, I make it clear that the Society is liable to pay only the amount actually received by them from the L.I.C. That is to say, if the Society has received only amounts less than Rs. 1,23,473/-, the Society is liable to pay only the difference between the amount actually received by them and the Rs. 1 lakh already paid to the employee and his legal heirs. If the amount is not so paid within the said two weeks, the amount will carry interest at the rate of 12% per annum instead of 6% from the date the amount was paid by the L.I.C. to the 1st respondent. The Original Petition is allowed as above, but without any order as to costs.

Before parting with this case, I would like to express a fervent hope that the Government of Kerala will, at least now, wake up from slumber and consider the

question of notifying the coming into effect of Section 4A of the Payment of Gratuity Act, 1972, in the State of Kerala, without further delay. To alert the Government in this regard, a copy of this judgment will be forwarded to the Chief Secretary to Government.