

---

**(1999) 03 KL CK 0007**  
**In the High Court Of Kerala**  
**Case No : O.P. No. 7225 of 1993**

V. Bhaskara Menon

APPELLANT

Vs

State of Kerala

RESPONDENT

---

**Date of Decision :** 12-03-1999

**Acts Referred:**

**Citation :** (1999) 1 KLJ 953

**Hon'ble Judges :** D. Sreedevi, J

**Bench :** Single Bench

**Advocate :** N.P. Samuel, for the Appellant; P.V. Madhavan Nambiar and Subal Paul, Govt. Pleader, for the Respondent

---

## Judgement

1. This original petition has been filed for a writ of mandamus directing the respondent to disburse the petitioner the gratuity amount of Rs. 69,600/- with interest at 18% per annum from 1-12-1990 till realisation and to issue a writ of certiorari quashing Exts. P6, P7 and P9. Petitioner was an employee of the Kerala Sahitya Academy. After completing 32 years of service he retired from service on 30-11-1990. At the time of his retirement his basic pay was Rs. 1,450/- . There is no provision for the employees of the second respondent to claim pension. By G.O.(MS) No. 611/61/ Edn. dated 14-10-1961 the service conditions of the employees of the second respondent were also prescribed. Rule 20(c) of the service rules of the Academy provides that at the time of retirement all employees are entitled to gratuity under Rule 64 of Chapter II and the additional gratuity as per Rules 66 and 68 of Chapter IV K.S.R. According to the petitioner if an employee has 10 years service he is entitled to get gratuity at the rate of one month's salary for each completed year of service. If an employee has more than 10 years service, according to the K.S.R., the employee is entitled to get pension. An employee who is entitled to get pension is also entitled to get additional gratuity as provided under Rule 66 of Part III K.S.R. The petitioner claims gratuity at the rate of one month's emoluments for every completed year of service and additional gratuity at the rate of one half of the emoluments of an

employee for each completed year of service as provided under Rule 68 of K.S.R. Thus, according to the petitioner he is entitled to get gratuity of Rs. 69,600/- .

2. The respondents filed a counter stating that as per Part III K.S.R. a person below 9 years qualifying service is only eligible for 11/2 of the total emoluments per month as gratuity. Petitioner having 32 years qualifying service is not eligible for 11/2 of total emoluments as gratuity. There is no provision in the K.S.R. to give the petitioner gratuity at the rate of 11/2 month's pay for every completed year of service. According to the first respondent the gratuity payable is only Rs. 23,200/- .

3. It is admitted by the respondents that when another employee Mr. Pavanan retired, he was awarded gratuity and additional gratuity at the rate claimed by the petitioner.

4. The only question to be decided in this case is whether the petitioner who was an employee of the Sahitya Academy can claim gratuity and additional gratuity at the rate claimed by him. According to the petitioner, he is entitled to gratuity and additional gratuity as per rule 20(c) of the Service Rules of Employees of the Academy, which provides, that at the time of retirement the employees are entitled to gratuity provided under R.64 Chap. III and additional gratuity under Rules 66 and 68 of Chap. IV. No pension has been provided for the employees of the second respondent. If an employee has only less than ten years service, then he is entitled to gratuity at the rate of one month's salary for one year's service. If an employee has served more than ten years, as per K.S.R. he is entitled to get pension. Petitioner alleges that an employee entitled to get pension is also entitled to get additional gratuity, as provided under Rule 66, part III, K.S.R. Petitioner has put in 32 years of service. According to him, as per rule 64, part III, K.S.R. he is entitled to get gratuity at the rate of one month's emoluments for every completed year of service and rule 66, part III, K.S.R. provides for payment of additional gratuity as provided under Rule 68, Part III K.S.R. to employees who have completed five years of qualifying service, and are eligible for gratuity or pension. Under rule 68, Part III, K.S.R., the amount of additional gratuity to be paid shall be one-half of the emolument of each completed year of qualifying service. Petitioner's claim to get gratuity and additional gratuity had been objected to by the Local Fund Examiner. Therefore, petitioner filed O.P. No. 13945 of 1992. The stand taken by the Government is that rulers 64, 66 and 68 part III K.S.R. have no application as no pension is provided for the employees of the academy. O.P. No. 13945 of 1992 was disposed of directing the respondents to pass final orders in the matter within a period of two months from the date of receipt of copy of the judgment, as per Ext. P3. At the time of retirement, the petitioner was drawing a basic salary of Rs. 1450/- per month. He had 32 years of qualifying service on the date of retirement. Therefore, as per rule 68, Part III, K.S.R.-

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 15 times the

emoluments. In the case of invalid pension or in the event of death of an employee while in service, the gratuity will be subject to a minimum of 12 times the emoluments of the employee last drawn. The maximum amount of gratuity under this rule will, however, be limited to Rs. 22,500/- .

Therefore, the petitioner is entitled to realise only Rs.  $1450 \times 32 \times 1/2 =$  Rs. 23,200/- . It is submitted that Mr. Pavanan, another employee of the second respondent, was given both gratuity and also additional gratuity. Hence, the petitioner claims that he is also entitled to get the gratuity and additional gratuity. The Learned Counsel for the second respondent submitted that so far as Sri. Pavanan is concerned, there was a special contract between Shri. Pavanan and the second respondent and hence as per the contract he was awarded gratuity and additional gratuity. So far as the petitioner is concerned, there is no special contract and as such he is entitled to only the gratuity under rule 68, part III K.S.R. Rule 20(c) of the Conditions of Service of the Staff of the Academy only provides that gratuity and additional gratuity as per the Kerala Service Rules will be available to the employees. The cumulative effect of rule 20(c) of the rules and rules 64, 66 and 68, part III, K.S.R. will show that only a person who has not completed more than 9 years and also who does not fall below the minimum service is entitled to both the benefits. Therefore, the petitioner is not entitled to get an order in his favour, as prayed for.

In the result, the respondents are directed to pay gratuity, Rs. 23,200/- within one month from the date of receipt of a copy of this judgment, failing which it will bear 12% interest till date of realisation.

In this perspective, I wish to mention that it is too hard for an employee having put in 32 years of service and who is not entitled to pension is let off unceremoniously on payment of a meagre amount as gratuity to lurch in anxiety to make both ends meet, while officers working in other autonomous bodies are allowed pension and death-cum-retirement gratuity. The government and the second respondent may consider this question sympathetically.

Send a copy of this judgment to the Chief Secretary to Government of Kerala, Thiruvananthapuram, forthwith.

The original petition is disposed of with the above direction and observations. There will be no order as to costs.