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**SooperKanoon Citation :** [sooperkanoon.com/725444](http://sooperkanoon.com/725444)

**Court :** Kerala

**Decided On :** Jan-13-1994

**Reported in :** [1994(680)FLR1239]; (1994)IILLJ786Ker

**Judge :** K. Narayana Kurup, J.

**Appeal No. :** O.P. No. 10067/1989-W

**Appellant :** P. Gopidasan

**Respondent :** Kerala State Electronics Development Corpn. Ltd. and ors.

**Advocate for Def. :** T.P.K. Nambiar, Adv.

**Advocate for Pet/Ap. :** T. Ravikumar, Adv.

**Disposition :** Petition allowed

**Judgement :**

**K. Narayana Kurup, J.**

1. The prayer in this original petition is for the issuance of a writ of certiorari to quash Exhibit P-5 communication of the second respondent addressed to the petitioner and for the issuance of a writ of mandamus commanding the respondents to pay the amount due to the petitioner being gratuity as per item 3(b) of Exhibit P-2 and for other incidental reliefs.

2. The facts of the case are as follows: The petitioner joined the first respondent, the Kerala State Electronics Development Corporation Ltd. (for short 'the Corporation') as an Accounts Manager, on June 26, 1979. He was promoted as Finance Manager in the corporate head office during 1981. Thereafter, the post was redesignated as Finance Controller and he was promoted to general manager's grade with effect from April 1, 1983. The petitioner was given additional charge as Company Secretary with effect from April 19, 1983. Again, in May, 1988, the post of Company Secretary was redesignated as Executive Director (Finance and Accounts) and Company Secretary. He retired as Executive Director and Company Secretary on March 31, 1989. Thus, he has a continuous service of nine years and 279 days. At the time of his retirement, the petitioner was drawing a monthly salary of Rs. 5, 168.

Learned counsel appearing for the petitioner submits that the Corporation has introduced Exhibit P-1 gratuity scheme. Clause 3(1) of Exhibit P-1 scheme deals with eligibility of gratuity which provides as follows:

'3. (1) An employee shall be eligible to receive gratuity from the employer as per these rules on his leaving the service of the company if he has rendered continuous service for a period of not less than five years with the employer. This will be paid on death/superannuation/retirement or on leaving the services of the employer. The payments will be made as per Schedule I'.

The relevant provision of Schedule I of Exhibit P-1 scheme with which we are concerned is extracted below:

Superannuation/retirement

in cases not covered by (2) above

(a) After 15 years of continuous service

At the rate of one month's eligible salary at the time of retirement/superannuation for each completed year of service subject to a limit of 20 months' salary.

(b) Above 10 years but below 15 years

75% of the sum calculated as in (a) above.

(c) Above 5 years but below 10 years

50% of the sum calculated as in (a) above.

Under Exhibit P-1, 'year' is defined to mean a period of 365 days and in the case of fraction of a year, a continuous period of 183 days or more. Since the petitioner has 9 years and 279 days service, he must be taken to have put in 10 years of service as on the date of his retirement. So, by applying the provisions of Clause (3), Sub-clause (b) of the Schedule, the petitioner is not entitled to claim 75% of one month's eligible salary for each completed year of service because he has not to his credit above 10 years of service. Going by Exhibit P-1, the petitioner can come in only under Clause 3(c) of the Schedule thereto, namely, above 5 years but below 10 years, which entitles the petitioner only to 50% of one month's eligible salary for each completed year of service. But it is the petitioner's specific case that Exhibit P-1 was subsequently amended by the Corporation substituting it with Exhibit P-2. Exhibit P-2 is dated January 30, 1989. Clause 3 of Schedule I to the gratuity scheme before the amendment and after the amendment is as follows:

Before the amendment

3(a) After 15 years of continuous service

(b) Above 10 years but below 15 years

(c) Above 5 years but below 10 years

After the amendment

3(a) 15 years of continuous service and above

(b) 10 years and above but below 15 years

(c) 5 years and above but below 10 years

5. Based on Exhibit P-2, the petitioner submits that his case will come squarely under Clause 3(b) thereof. The phraseology used in Clause 3(b) of Exhibit P-2 is

10 years and above but below 15 years (and not above 10 years as in Exhibit P-1) in which case the petitioner will be eligible to get 75% of one month's eligible salary for each completed year of service instead of 50% of one month's eligible salary for each completed year of service as provided in Exhibit P-1. Since the petitioner was paid only a sum of Rs. 29,815.30 calculated at the rate provided under Clause 3(c) of Exhibit P-1, he submitted Exhibit P-3 representation to the second respondent, Vice-Chairman of the Corporation. Since Exhibit P-3 did not elicit any reply, the petitioner submitted Exhibit P-4 reminder to which he received Exhibit P-5 reply rejecting the petitioner's request to be paid gratuity as per the rate mentioned in item 3(b) of Exhibit P-2.

6. The question that arises for consideration in this original petition is whether the petitioner is eligible to be paid gratuity at the rate of 75% of one month's eligible salary for each completed year of service as contemplated under Clause 3(b) of Exhibit P-2 or whether the petitioner is eligible to be paid only 50% as contemplated under Clause 3(c) of Exhibit P-1. The entitlement of the petitioner for the higher rate of gratuity as contemplated under Clause 3(b) of Exhibit P-2 will depend upon whether he has put in a service of 10 years and above as on the date of his retirement. In this connection, it is pertinent to note the different phraseology used in Exhibits P-1 and P-2. Whereas, the phraseology used in Exhibit P-1 Clause 3(b) is 'above 10 years', the phraseology used in Clause 3(b) of Exhibit P-2 is '10 years and above'. Going by Clause 3(b) of Exhibit P-1, admittedly, the petitioner has no case that he is eligible to 75% as, according to him, he has not put in above 10 years service. But, it is his specific case that he will come within the purview of Clause 3(b) of Exhibit P-2 which is the amended provision of Exhibit P-1. In order to get entitlement at the rate of 75% of one month's eligible salary for each completed year of service, one should put in a service of 10 years and above in contrast to above 10 years as used in Exhibit P-1. It is not anybody's case that the petitioner has not put in a service of 10 years and above as contemplated in Clause 3(b) of Exhibit P-2. In the counter-affidavit filed on behalf of the first respondent, it is stated in paragraph 5 that at the time of retirement of the petitioner on March 31, 1989, he has put in a service of 9 years and 279 days and since he had a service of more than 183 days in the 10th year of his service, it was taken as a full year for the purpose of reckoning the number

of years for which he was eligible for gratuity. The result, therefore, was that fraction of a year, namely, 183 days or more, will be considered as full year for the purpose of reckoning the number of years for which gratuity will be paid. However, the respondents have advanced a feeble case that this will not be considered for reckoning the rate of gratuity. I do not find any substance in this contention as the change of phraseology is specific and admits of no ambiguity.

7. The respondents have put forward yet another case in paragraph 8 of their counter-affidavit in which it is stated that the gratuity scheme had to be amended later to declare the intention of the scheme and to remove certain doubts relating to its interpretation and the scheme was amended on June 24, 1989, which retrospectively took effect from December 17, 1988, deleting the definition of the word 'year' and amending the first paragraph of Clause (4), making it to read as follows:

'Gratuity shall be payable as per the rates shown in Schedule I for every completed year of service. Fraction of a year 183 days or more will be considered for the purpose of arriving at the number of years for which payment is to be made and not for deciding the rate of gratuity.'

8. At the outset, it has to be observed that this amendment is of no avail to the respondents as it has been introduced only on June 24, 1989, long after the retirement of the petitioner on March 31, 1989. It is settled that vested rights conferred on the employees cannot be divested by executive orders with retrospective effect. The amendment cannot, therefore, deprive the petitioner of his valuable right conferred under Exhibit P-2.

9. In the light of the above discussion, I have no hesitation in holding that the petitioner is entitled to the benefit of Clause 3(b) of Exhibit P-2 as he has put in 10 years of service entitling him to the enhanced rate of gratuity. According to the petitioner, as already noticed, he is paid a sum of Rs. 29,815.30 and the balance outstanding being the difference in the amount of gratuity applying the enhanced rate provided under Exhibit P-2 Clause 3(b) will come to Rs. 14,900 and the petitioner is eligible for the same. Exhibit P-5 is accordingly quashed. There shall be a direction to the respondents to disburse the petitioner a sum of Rs. 14,900

being the balance amount of gratuity with 12% interest from the date on which it became due to the date of disbursal.

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