

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

&

THE HONOURABLE MR. JUSTICE C.PRATHEEP KUMAR

WEDNESDAY, THE 7TH DAY OF FEBRUARY 2024 / 18TH MAGHA, 1945

WA NO.1749 OF 2023

JUDGMENT IN WP(C) 6510/2011 OF HIGH COURT OF KERALA
DATED 5.7.2023

APPELLANTS/PETITIONERS :-

- 1 JOHN SEBASTIAN, SL.NO.12,
PUTHUVETIL, KARITHURA, CHAVARA,
KOLLAM - 691 583.
- 2 MATHEW BANABAND (DIED), SL.NO.10,
NADUVILAZHIKATHU KOCHU VEEDU, KARITHURA,
CHAVARA, KOLLAM, PIN - 691 583
- 3 THOBIAS ANTONY (DIED)
THYKOOTTATHIL, KARITHURA, CHAVARA,
KOLLAM, PIN - 691 583
- 4 JOHN VICTOR,
NADIVULAYYATHU VEEDU
KARITHURA, CHAVARA, KOLLAM, PIN - 691 583.
- 5 PIOUS VELLARIAN (DIED), SL NO.29,
GRECI MANDIRAM, KULANGARABHAGOM,
CHAVARA, KOLLAM, PIN - 691 583
- 6 DOMINIC NICHOLAS (DIED), MEMBERSHIP NO.80
REJI COTTAGE, KARITHURA,
CHAVARA, KOLLAM, PIN - 691 583
- 7 GEORGE JOHN, MEMBERSHIP NO.31,
KOICKALAZHIKATHU VEEDU, KOVILTHOTTAM,
CHAVARA, KOLLAM, PIN - 691 583
- 8 ANTONY AUGUSTINE,
VADAKKADATHU PADINJATTATHIL, KULANGARA BHAGOM,
CHAVARA, KOLLAM, PIN - 691 583
- 9 PAULOSE KUNJ VAREETH (DIED),
MANASSERIL HOUSE 132, MINING KOVILTHOTTAM,
KOLLAM, PIN - 691 001

-: 2 :-

- 10 ALEXANDER KARLOSE (DIED),
MAMPARAMBIL KARITHURA, CHAVARA,
KOLLAM, PIN - 691 583
- 11 CHRISTOPHER SHAKES (DIED),
VADAKKEDATHUTHOPPIL KULANGARABHAGOM, CHAVARA,
KOLLAM, PIN - 691 583
- 12 JOHN JOSEPH (DIED), MEMBERSHIP NO.105
CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA, KOLLAM, PIN - 691 583
- 13 JOHN JOSEPH (DIED), MEMBERSHIP NO.89,
KOCHUPETHURU PURAYIDOM, KARITHURA,
CHAVARA, KOLLAM, PIN - 691 583
- 14 PHILDILISE GEORGE,
KUNNIL PADEETHATHIL, KARITHURA,
CHAVARA, KOLLAM, PIN - 691 583

Addl.Appellants (legal heirs of 13th appellant) :-

- 15 MAGDALANA
W/O.LATE JOHN JOSEPH, KOCHUPERETHIRU PURAYIDAM,
KARITHURA, CHAVARA, KOLLAM, PIN - 691 583
- 16 JUSTIN
S/O. LATE JOHN JOSEPH, KOCHUPERETHIRU PURAYIDAM,
KARITHURA, CHAVARA, KOLLAM, PIN - 691 583
- 17 SACLAX
S/O. LATE JOHN JOSEPH, KOCHUPERETHIRU PURAYIDAM,
KARITHURA, CHAVARA, KOLLAM, PIN - 691 583
- 18 RINI
D/O. LATE JOHN JOSEPH, KOCHUPERETHIRU PURAYIDAM,
KARITHURA, CHAVARA, KOLLAM, PIN - 691 583

Addl.Appellants (legal heirs of appellants 2, 3, 5, 6, 9, 10, 11 & 12) :-

- 19 LILLY MATHEW
W/O.LATE MATHEW (LEGAL HEIR OF 2ND APPELLANT)
RESIDING AT STERVIN DALE, EDATHURUTHU, CHAVARA P.O,
KOLLAM, PIN - 691 583

- 20 AGNES.A
W/O. LATE THOBIAS(LEGAL HEIR OF 3RD APPELLANT) ,
RESIDING AT "THIKKOOTTATHIL, KULANGARABHAGAM,
CHAVARA P.O., KOLLAM, PIN - 691 583
- 21 JAIN PIOUS
W/O.PIUS VELLARIAN (LEGAL HEIR OF 5TH APPELLANT) ,
RESIDING AT GRACY MANDIRAM, KULANGARABHAGAM,
CHAVARA-P.O., KOLLAM, PIN - 691 583
- 22 PUSHPAMA DOMINIC
W/O.LATE DOMINIC NICHOLAS (LEGAL HEIR OF 6TH
APPELLANT) RESIDING AT REJI COTTAGE, KARITHURA,
CHAVARA-P.O., KOLLAM, PIN - 691 583
- 23 ELIZEBATH
W/O. LATE PAULOSE KUNJU VAREETH (LEGAL HEIR OF 9TH
APPELLANT) MENASSERIL VEEDU, KARITHURA (EDATHURUTHU) ,
CHAVARA-P.O., KOLLAM, PIN - 691 583
- 24 STELLA
W/O.LATE ALEXANDER KARIOS (LEGAL HEIR OF 10TH
APPELLANT) MAMPARAMBIL, KARITHURA, CHAVARA-P.O.,
KOLLAM, PIN - 691 583
- 25 LUSY CHRISTEPHER
W/O.LATE CHRISTPHER SHAKES (LEGAL HEIR OF 11TH
APPELLANT) VADAKKEDATH THOPPIL,
KULANGARABHAGAM, CHAVARA-P.O., KOLLAM, PIN - 691 583
- 26 CHERUPUSHPAM. J
D/O.LATE JOHN JOSEPH (LEGAL HEIR OF 12TH APPELLANT
RESIDING AT CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA-P.O, KOLLAM, PIN - 691 583
- 27 JOSE. J
S/O.LATE JOHN JOSEPH (LEGAL HEIR OF 12TH APPELLANT)
RESIDING AT CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA-P.O., KOLLAM, PIN - 691 583
- 28 THRESIA. J
D/O. LATE JOHN JOSEPH (LEGAL HEIR OF 12TH APPELLANT)
RESIDING AT CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA-P.O, KOLLAM, PIN - 691 584

29 NOBLE. J
S/O. LATE JOHN JOSEPH (LEGAL HEIR OF 12TH APPELLANT)
RESIDING AT CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA-P.O., KOLLAM, PIN - 691 583

30 DERIC. J
S/O. LATE JOHN JOSEPH (LEGAL HEIR OF 12TH APPELLANT)
RESIDING AT CHERUPUSHPA MANDIRAM, KARITHURA,
CHAVARA-P.O., KOLLAM, PIN - 691 583

BY ADVS.
D.P.RENU
V.R.LAKSHMI
N.DHARMADAN (SR.)

RESPONDENTS/RESPONDENTS :-

1 APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY,
REGIONAL LABOUR COMMISSIONER (CENTRAL),
KOCHI, PIN - 682 030

2 THE GENERAL MANAGER
INDIAN RARE EARTHS LIMITED, CHAVARA,
KOLLAM, PIN - 691 583

3 THE PRESIDENT
INDIAN RARE EARTHS LTD, LOADING AND UNLOADING
WORKERS WELFARE FORUM, IRE LIMITED CHAVARA,
KOLLAM, PIN - 691 583

4 THE SECETARY
IRE LOADING AND UNLOADING WORKERS WELFARE FORUM,
IRE LIMITED, CHAVARA, KOLLAM, PIN - 691 583

SRI.S.MANU
SRI.PAULSON C VARGHESE

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
15.1.2024, THE COURT ON 7.2.2024 DELIVERED THE FOLLOWING:

ANU SIVARAMAN, J. & C.PRATHEEP KUMAR, J.

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W.A.No.1749 of 2023

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Dated this the 7th day of February, 2024

JUDGMENT

Anu Sivaraman, J.

1. This appeal is preferred against the judgment dated 05.07.2023 rejecting the writ petition preferred by the appellants, who were former loading and unloading workers under the 2nd respondent company.

2. The writ petition had been preferred against orders of the controlling authority and the appellate authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act'). The appellants contended that they are entitled to gratuity at the rate of fifteen days wages for every completed year of service, taking into account of basic pay and other allowances. It was contended that Section 14 of the Act specifically provides that the Act shall have application regardless of anything provided in any other act or settlement. It is submitted that since the contention of the company was that gratuity was fixed reckoning seven days of wages for every completed year of service on the basis of a settlement dated 20.11.1993, the learned

single Judge ought to have seen that the reliance on the settlement was completely misconceived as no such settlement could have any application against the provisions of the Act. It is contended that Section 4(2) of the Act specifically provides for gratuity at the rate of 15 days of wages for every completed year of service and that such rate of gratuity cannot be altered to the detriment of the workers.

3. The learned Senior Counsel appearing for the appellants relied on Section 4(2) and Section 14 of the Act and contended that gratuity is to be paid to employees taking note of the calculation as provided in Section 4(2) and there can be no departure from the said calculation even if a settlement is entered into between the parties in view of Section 14. It is further contended that the learned single Judge had proceeded to grant reliefs in the connected writ petition which amounted to reducing the amounts to which the appellants were found eligible by the appellate authority which was erroneous and the judgment is liable to be corrected on that count as well.

4. The learned Senior counsel appearing for the 2nd respondent would contend that it was the specific case raised before the

learned single Judge that the 2nd respondent was not the employer of the appellants and that the appellants were loading and unloading workers engaged through various contractors or unions and there was no employer-employee relationship between the 2nd respondent and the appellants. However, the workers raised a claim for regularisation and the matter was decided by this Court in its judgment in W.P.(C). No.4999/2009 where it has been clearly found that there was no employer-employee relationship between the appellants and other similarly situated workers and the 2nd respondent. It is submitted that a settlement was entered into between the workers and the company on 20.11.1993 and all workers who had rendered service through contractors in the 2nd respondent were covered by the terms of the settlement which provided for ex gratia payment in lieu of gratuity to members who retired/resigned/died on or after 01.04.1993 at the rate of 7 days wages for service rendered with independent contractors prior to formation of the IRA loading and unloading workers welfare forum and 15 days wages for service rendered after formation of the forum. It is contended that after formation of the forum in 1993, gratuity was being paid at the rates as specified in the Act. It is contended that the grant of ex gratia in lieu of gratuity for the prior period was only a benefit

extended by the company to the workers, who were admittedly not entitled to payment of gratuity under the Act, since they had not rendered services under the company. It is, therefore, contended that the appeal is devoid of merits and is liable to be dismissed *in limine*.

5. The learned counsel appearing for the 4th respondent-forum also supported the contentions of the learned Senior counsel appearing for the 2nd respondent. It is submitted that the dispute is only with regard to payment of the ex gratia amount as provided in the settlement and there can be no contention that the amounts, as due under the Act, are to be paid since there was no employer-employee relationship between the 2nd respondent and the workers and the question of payment of gratuity does not arise.

6. We have considered the contentions advanced. The learned single Judge had considered the rival contentions and come to the conclusion that the payment of the amounts as evidenced by the terms of settlement arrived at on 20.11.1993 is only an ex gratia payment and cannot be termed to be a payment of gratuity under the Act. Further, the question of jurisdiction of the controlling

authority and the appellate authority under the Act had also been considered earlier in W.P.(C).No.4999/2009.

7. In the factual situation as obtained in the instant case, we are not persuaded to hold that there is any error or illegality in the judgment of the learned single Judge. The provisions of the Act, including Section 14 thereof, would not have any application, since it is an admitted fact that the workers were not directly engaged by the company and could not have raised a claim for gratuity against the company. It is only in terms of the settlement dated 20.11.1993 that they became entitled for payment of the ex gratia amount in lieu of gratuity.

8. In the above view of the matter, we are of the opinion that the judgment of the learned single Judge is not liable to be interfered with in this intra-court appeal. The appeal thus fails and the same is, accordingly, dismissed.

Sd/-

Anu Sivaraman, Judge

Sd/-

C. Pratheep Kumar, Judge

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