

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE MURALI PURUSHOTHAMAN

MONDAY, THE 4TH DAY OF JULY 2022 / 13TH ASHADHA, 1944

WP(C) NO. 7931 OF 2022

PETITIONER:

COCHIN UNIVERSITY OF SCIENCE AND TECHNOLOGY - CUSAT
REPRESENTED BY ITS REGISTRAR, COCHIN UNIVERSITY P.O,
KALAMASSERY, ERNAKULAM, KOCHI - 682022.

SHRI.S.P.ARAVINDAKSHAN PILLAY, SC

RESPONDENTS:

- 1 DR.P.V.SASIKUMAR
'SAPHALYAM', 37/2014 A2, JAWAHAR NAGAR, KADAVANTHRA,
ERNAKULAM, KOCHI - 682020.
- 2 APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT
AND THE REGIONAL JOINT LABOUR COMMISSIONER, ERNAKU-
LAM, OFFICE OF THE REGIONAL JOINT LABOUR COMMIS-
SIONER,
CIVIL STATION, ERNAKULAM, KOCHI - 682030.
- 3 CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY
ACT
AND THE DEPUTY LABOUR COMMISSIONER, ERNAKULAM,
OFFICE OF THE DEPUTY LABOUR COMMISSIONER, CIVIL STA-
TION, ERNAKULAM - 682030.

BY ADV MANU GOVIND-R1
SR.G.P-SRI.JUSTINE JACOB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
04.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

Cochin University of Science and Technology (hereinafter referred to as 'university', for short) has filed this writ petition challenging Ext.P9 order of the controlling authority under the Payment of Gratuity Act, 1972 (for brevity, 'the Act') and Ext.P12 order of the appellate authority under the Act.

2. The 1st respondent was appointed as a Professor on contract basis in Kunjali Marakkar School of Marine Engineering, an Engineering Institution of the University. The contract was executed with the university on 12.01.2006 and was renewed from time to time till 21.05.2016. On cessation of the contract appointment, the 1st respondent filed a claim petition dated 12.11.2018 before the controlling authority under the Act claiming an amount of Rs.6,05,769/- as gratuity for the service rendered in the university. The claim petition was filed with an application to condone the delay of 761 days. The university resisted the application contending that the 1st respondent has not shown 'sufficient

cause' for the delay in filing the claim and the provisions of the Act are not applicable to the university and that the university will not come within the purview of an 'establishment' under section 1(3) (c) or an 'employer' under section 2 (f) and the 1st respondent will not come within the definition of an 'employee' under section 2 (e) of the Act. It was also contended that the first respondent was not having 'continuous service' of 240 days in a year as required under section 2A of the Act.

3. The controlling authority, vide Ext.P9, found that the 1st respondent has shown sufficient cause for the delay in filing the claim and that the university is an establishment and an employer under the Act and 1st respondent is an employee and he was in continuous service of the university from 12.01.2006 to 21.05.2016 and he is entitled for gratuity of Rs.6,05,769/-. The appellate authority, by Ext.P12 order, confirmed Ext.P9 order of the controlling authority.

4. In the writ petition, it is contended by the petitioner that the university is not an establishment under section 1(3) (c) or an employer under section 2 (f) and the 1st respondent is not an employee under section

2 (e) of the Act. It is also contended that no sufficient cause was shown by the 1st respondent before the controlling authority to condone the delay of 761 days in preferring the claim petition. The petitioner also contends that the 1st respondent was appointed on contract basis which was extended on execution of fresh contracts and he had not worked for 240 days for any period of one year as contemplated under section 2A of the Act.

5. Heard Sri.S.P.Aravindakshan Pillay, the learned standing counsel for the petitioner, Sri.Manu Govind, the learned counsel for the 1st respondent and Sri. Justine Jacob, the learned senior Government Pleader for respondents 2 and 3.

6. Section 1(3) (c) of the Act reads as follows:

“It (the Act) shall apply to - (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, or, any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.”

The Central Government in exercise of the powers conferred by clause (c) of sub-section 3 of section 1 of the Act had extended the provisions of the

Act to educational institutions employing ten or more persons as per Notification No. S-42013/1/95-SS.II, dated 3rd April, 1997. Since the provisions of the Act have been made applicable to educational institutions as per the notification issued by the Central Government in exercise of the powers conferred under clause (c) of sub-section 3 of section 1 of the Act, Cochin University of Science and Technology, an educational institution, is an establishment under section 1(3) (c) of the Act.

7. Since it is found that the petitioner university is an establishment under section 1(3) (c) of the Act, the contention of the petitioner that university is not an 'employer' under the Act cannot be sustained. The university is an 'employer' in relation to the establishment as contemplated under section 2 (f) of the Act.

8. The definition of 'employee' under section 2 (e) of the Act, as amended by Payment of Gratuity (Amendment) Act, 2009 with retrospective effect from 03.04.1997, reads as under:

“(e) “employee” means any person (other than an apprentice) who is employed

for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.”

The Payment of Gratuity (Amendment) Act, 2009, widened the definition of 'employee' under the Act in order to extend the benefit to the teachers with effect from the date on which the provisions of the Act were made applicable to educational institutions vide notification referred to supra. The definition of employee under section 2 (e) takes in teachers. Interpreting section 2 (e) of the Act, as amended by the Payment of Gratuity (Amendment) Act, 2009, the Apex Court in **Birla Institute of Technology v State of Jharkhand & others [2019(4)SCC 513: AIR 2019 SC 1309: 2019 KHC 6290]**, has held that teachers will come within the purview of 'employee' as defined in the Act.

9. The 1st respondent was appointed as a Professor on contract basis by the university for a period of 10 years from 12.01.2006 to 21.05.2016. The 1st respondent comes within the definition of 'employee' under section

2 (e) of the Act and was employed for 'wages' as defined under section 2 (s) and was not an apprentice. Going by section 2(e) of the Act, all employees are entitled to the payment of gratuity except an apprentice. The Act intends to exclude the applicability of the provisions of the Act only in case of apprentice. The 1st respondent who was appointed on contract basis in the establishment by the employer on wages comes within the purview of the definition of 'employee', under the Act.

10. The controlling authority and the appellate authority on the basis of the evidence adduced found that the 1st respondent was having continuous service as defined in section 2A read with sub section (2) (ii). The authorities under the Act have found that, during the ten years of service of the 1st respondent there was no break and he had attendance of more than 240 days each year. I do not find any reason to interfere with the finding of fact recorded by the authorities under the Act.

11. The controlling authority as well the appellate authority have found that the 1st respondent has made out sufficient cause for condoning the delay in filing the claim petition. It was observed that, under section

7(2) of the Act, even if an application is not submitted under section 7(1), the employer shall determine the amount of gratuity and give notice to the employee and the controlling authority. This Court, in **Kerala State Co-operative Bank Ltd; Tvm v. Court of Deputy Labour Commissioner, Kozhikode and another [2021 (1) KHC 239: 2021 (1) KLT 466: ILR 2021 (1) Ker.1028]**, has held that, when section 4 is read along with section 7 of the Act, it is explicit that, even without an application made by the employee, the employer is bound to quantify and pay the gratuity on termination of his employment. Therefore, the 1st respondent cannot be faulted for the delay in filing the claim petition.

There is no error of law or error of fact to interfere with the orders impugned. The writ petition is dismissed. No order as to costs.

Sd/-

**MURALI PURUSHOTHAMAN
JUDGE**

APPENDIX OF WP(C) 7931/2022

PETITIONER'S EXHIBITS:

Exhibit P1 TRUE COPY OF THE UNIVERSITY ORDER NO. AD.F1/5677/2005/RECT(1) DATED 15.02.2006.

Exhibit P2 TRUE COPY OF THE CONTRACT APPOINTMENT TO THE POST OF PROFESSOR IN K.M.SCHOOL OF MARINE ENGINEERING EXECUTED BY THE 1ST RESPONDENT.

Exhibit P3 TRUE COPY OF THE CLAIM PETITION DATED 12.11.2018 IN FORM-N OF THE PAYMENT OF GRATUITY ACT, 1972, WITH A DELAY PETITION BEFORE THE 3RD RESPONDENT.

Exhibit P4 TRUE COPY OF THE STATEMENT FILED IN GC 344/2018 ON BEHALF OF THE PETITIONER HEREIN WITHOUT ITS ENCLOSURES.

Exhibit P5 TRUE COPY OF THE REPLICATION NOTE DATED 01.02.2019 FILED BY THE 1ST RESPONDENT ALONG WITH ITS ANNEXURE.

Exhibit P6 TRUE COPY OF THE COUNTER AFFIDAVIT DATED 07.03.2019 FILED ON BEHALF OF THE PETITIONER HEREIN IN G.C. 344/2018.

Exhibit P7 TRUE COPY OF ADDITIONAL COUNTER AFFIDAVIT DATED 07.03.2019 FILED ON BEHALF OF THE PETITIONER HEREIN G.C. NO.344/2018.

Exhibit P8 TRUE COPY OF THE SUPPLEMENTARY AFFIDAVIT DATED 12.04.2019 FILED BY THE 1ST RESPONDENT HEREIN IN G.C. NO.344.

Exhibit P9 TRUE COPY OF THE ORDER DATED 01.12.2020 IN G.C. 344/2018 OF THE 3RD RESPONDENT.

Exhibit P10 TRUE COPY OF THE MEMORANDUM OF APPEAL FILED U/S. 7(7) OF THE PAYMENT OF GRATUITY ACT BEFORE THE 2ND RESPONDENT ALONG WITH STAY PETITION.

Exhibit P11 TRUE COPY OF THE OBJECTION FILED BY THE 1ST RESPONDENT HEREIN TO EXT.P10 APPEAL.

Exhibit P12 TRUE COPY OF ORDER NO.GA23/2021 DATED 31.01.2022.

spc/