



2024:KER:78626

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 23RD DAY OF OCTOBER 2024 / 1ST KARTHIKA, 1946

WP(C) NO. 22930 OF 2023

PETITIONER:

UNNIKRISHNA PILLAI P.V.,
AGED 58 YEARS
SWATHI, NILA -25, KOLLANPADY, IRUMPANAM P.O.,
THRIPUNITHURA, ERNAKULAM DISTRICT, PIN - 682309

BY ADV NANDA SURENDRAN

RESPONDENTS:

- 1 HDFC BANK LIMITED,
S.L. PLAZA, 2ND FLOOR, PALARIVATTOM,
ERNAKULAM - 682 025,
REPRESENTED BY ITS STATE HEAD (HR)
- 2 THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY
ACT, 1972
[ASSISTANT LABOUR COMMISSIONER (CENTRAL)],
KAKKANAD, ERNAKULAM, PIN - 682030
- 3 THE APPELLATE AUTHORITY UNDER THE PAYMENT OF GRATUITY
ACT, 1972
[DEPUTY CHIEF LABOUR COMMISSIONER (CENTRAL)],
KAKKANAD, PIN - 682030



W.P.(C) No.22930/2023

: 2 :

BY ADVS.
K.K.CHANDRAN PILLAI (SR.)
K.SUDHINKUMAR
P.BENNY THOMAS
D.PREM KAMATH(K/1285/1998)
TOM THOMAS (KAKKUZHIYIL)(K/000821/2008)
ABEL TOM BENNY(K/1381/2018)
AARON ZACHARIAS BENNY(K/001533/2023)
PRAISY THOMAS(CG/249/2020)
AMRUTHA SELVAM(K/001249/2023)
BHARATH NAIR(K/002569/2022)
SRI.T.C. KRISHNA, DSGI IN CHARGE

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 01.08.2024, THE COURT ON 23.10.2024 DELIVERED THE
FOLLOWING:



W.P.(C) No.22930/2023

: 3 :

N. NAGARESH, J......
W.P.(C) No.22930 of 2023
.....*Dated this the 23rd day of October, 2024***J U D G M E N T**

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The petitioner, who is a former employee of the 1st respondent-Bank, states that he joined services under the 1st respondent on 28.09.2006 as Senior Manager. The petitioner resigned from the services of the 1st respondent with effect from 31.03.2023 while working as Vice President. The petitioner was drawing ₹2,33,500/- per mensem at the time of his resignation. The petitioner was paid ₹5,94,554/- towards gratuity. Dissatisfied with the amount of gratuity, the petitioner approached the Controlling Authority under the Payment of Gratuity Act for payment of balance gratuity, which the petitioner claimed as ₹7,22,308/-.



W.P.(C) No.22930/2023

: 4 :

2. The 1st respondent filed Ext.P3 objection to Ext.P2 Gratuity Application filed by the petitioner. After considering Ext.P3 objection of the 1st respondent, the Controlling Authority found that apart from the Basic Salary, the Personal Pay also should have been taken as a component for computing gratuity. The Controlling Authority therefore passed Ext.P4 order directing the 1st respondent to pay balance gratuity amount of ₹7,22,308/-. The 1st respondent challenged Ext.P4 order of the Controlling Authority filing Ext.P5 appeal. The petitioner filed Ext.P6 comments. The petitioner also filed Ext.P7 appeal.

3. The petitioner states that on the first date of hearing of the appeal on 26.04.2023, the petitioner appeared in person before the Appellate Authority. The petitioner thereafter engaged an Advocate to represent him in both the appeals. On the next date of posting, 09.05.2023, the petitioner's counsel entered appearance. The counsel for the 1st respondent was absent on that day. Thereafter, both the appeals were posted to 19.05.2023. On 19.05.2023, the petitioner's counsel sought



W.P.(C) No.22930/2023

: 5 :

adjournment by two weeks, due to ill-health. But, the appeal was posted on 23.05.2023. The appeal was again adjourned to 14.06.2023 due to the ailment of the counsel of the petitioner. The appeal was adjourned to 22.06.2023. An adjournment was sought on that day also as the counsel for the petitioner was seriously ill. But, the Appellate Authority passed Ext.P8 order allowing the appeal filed by the 1st respondent and setting aside the order of the Controlling Authority. The petitioner is before this Court aggrieved by Ext.P8 order.

4. The counsel for the petitioner argued that Ext.P8 is an ex-parte order. Adjournments were sought as the petitioner's counsel was indisposed. The Appellate Authority, without rejecting the application for adjournment, passed Ext.P8 order on 27.06.2023. The Appellate Authority in his Ext.P8 order has copied the contentions raised by the 1st respondent in the appeal. The appellate order did not make any reference to the arguments of the petitioner. Ext.P8 order has been passed without application of mind.



W.P.(C) No.22930/2023

: 6 :

5. The counsel for the petitioner further argued that the 3rd respondent's conclusion that personal pay will not form part of the wages for calculating gratuity, is based on an incorrect reading and construction of the provisions of the Payment of Gratuity Act and Section 2(s). The Controlling Authority had correctly understood the term 'personal pay' and treated it as wages. The order of the Appellate Authority is therefore illegal and unsustainable.

6. The 1st respondent resisted the writ petition. The 1st respondent submitted that in terms of the letter of appointment, the petitioner was paid ₹22.99 lakhs towards superannuation fund, apart from his gratuity. The said superannuation fund is not a statutory requirement but it is only a gratuitous payment. Though under the Employees Provident Fund Act the 1st respondent was liable to pay contribution only on ₹15,000/-, the 1st respondent paid EPF contribution on the entire Basic Pay. The petitioner accepted all benefits available to him under the letter of appointment. The petitioner, however, challenged the



W.P.(C) No.22930/2023

: 7 :

computation of gratuity.

7. The Appellate Authority had posted the appeal on several days and had granted adjournments to the counsel for the petitioner at his request. As the petitioner's counsel was repeatedly seeking adjournments, the 3rd respondent had no other option but to hear and pass orders on the appeal.

8. I have heard the learned counsel for the petitioner, the learned Standing Counsel appearing for the 1st respondent and the DSGI-in-Charge representing respondents 2 and 3.

9. The petitioner served the 1st respondent from 28.09.2006 to 31.03.2023. His last drawn salary was ₹2,33,500/-. The 1st respondent paid ₹5,94,554/- towards gratuity. To calculate gratuity, the only component taken into account by the 1st respondent-employer was the Basic Pay. Apart from Basic Pay, the petitioner has been in receipt of house allowance, food allowance, telephone allowance, medical allowance, hard furnishing allowance, personal pay and other allowances.



W.P.(C) No.22930/2023

: 8 :

10. The Controlling Authority under the Payment of Gratuity Act found that though the Payment of Gratuity Act, 1972 excludes personal allowance for the purpose of calculation of wages, in the case of the petitioner the term used by the employer is “personal pay”. Therefore, though all other components described as allowances should be excluded for the purpose of calculation of gratuity, the component of “personal pay” should be taken into account for computation of gratuity. On the said finding, the Controlling Authority passed Ext.P4 order directing the employer to pay to the petitioner an amount of ₹7,22,308/- towards gratuity with simple interest at the rate of 10% on that amount, from the date on which gratuity became payable to the date on which it is paid.

11. The 1st respondent filed Ext.P5 appeal against Ext.P4 order of the Controlling Authority. The Appellate Authority held that as per Section 2(s), “wages” mean all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his



W.P.(C) No.22930/2023

: 9 :

employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowance. The Appellate Authority held that the Personal Pay paid by the employer-Bank to the petitioner is not wage under definition under Section 2(s) and hence it is not permissible to consider any other components other than the basic pay for calculation of gratuity.

12. The contention of the petitioner is that what are excluded from the definition of wages are bonus, commission, HRA, overtime wages and any other “allowance”. The term “personal pay” does not fall within any of the excluded components as it is not any “allowance” as contemplated by Section 2(s) and it should be treated as wage. There is no discussion on this point in Ext.P8 appellate order.

13. Be that as it may, it should be noted that the employer had filed Ext.P5 appeal against the order of the Gratuity Authority and the petitioner had filed Ext.P7 appeal



W.P.(C) No.22930/2023

: 10 :

against the same order. Ext.P8 relates to Ext.P5 appeal filed by the 1st respondent-employer. As two appeals were filed against the very same order of the Controlling Authority, it would have been advisable for the Appellate Authority to consider both the appeals together and pass order/orders.

14. The petitioner states that on the first date of hearing of appeal on 26.04.2023, the petitioner appeared in person before the Appellate Authority. The petitioner engaged a counsel. The case was posted to 09.05.2023. The petitioner's counsel appeared before the Appellate Authority on 09.05.2023 and filed Vakalat. The petitioner would submit that counsel for the 1st respondent did not turn up on 09.05.2023 at the time fixed.

15. Both the cases were posted to 19.05.2023. On that day, the petitioner's counsel sought adjournment due to ill-health. Though the counsel sought two weeks' time, the Appellate Authority posted the appeal within three days, on 23.05.2023. On 23.05.2023, the petitioner's counsel did not



W.P.(C) No.22930/2023

: 11 :

recover from illness and hence sought adjournment. The case was posted to 14.06.2023. As the illness was serious, an application was made on 14.06.2023 for adjourning the matter producing a Doctor's Certificate. But, the Appellate Authority posted the case too soon to 22.06.2023. Though the counsel sought further adjournment due to medical condition, no order was passed on adjournment request. The appeal filed by the 1st respondent was allowed as per Ext.P8 order dated 27.06.2023.

16. The pleadings would show that as the legal issue involved in the matter could not be effectively argued by the petitioner, he had engaged a Lawyer who appeared before the Appellate Authority and filed Vakalat. Due to ill-health of the counsel, adjournments were sought which was initially granted by the Appellate Authority. On 14.06.2023, as the counsel could not recover from his pulmonary ailment, the counsel sought adjournment producing a Doctor's Certificate. Only a short adjournment was given disregarding the nature of ailment



W.P.(C) No.22930/2023

: 12 :

and the case was posted to 22.06.2023. Request for adjournment made on that day was not granted. Considering the facts of the case and issue involved, the Appellate Authority ought to have granted further adjournment and heard the petitioner on merits, on the legal issue involved. Failure to do so has resulted in injustice to the petitioner.

The writ petition is therefore allowed. Ext.P8 order of the Appellate Authority in GA No.39/234/2023/B6 is set aside. The 3rd respondent-Appellate Authority is directed to rehear the appeal and pass orders afresh.

Sd/-

N. NAGARESH, JUDGE

aks/21.10.2024



W.P.(C) No.22930/2023

: 13 :

APPENDIX OF WP(C) 22930/2023

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF PAY SLIP OF PETITIONER FOR THE MONTH OF MARCH 2022
- Exhibit P2 TRUE COPY OF APPLICATION FOR GRATUITY DATED 08.06.2022 FILED BY PETITIONER BEFORE 2ND RESPONDENT
- Exhibit P3 TRUE COPY OF OBJECTION FILED BY 1ST RESPONDENT DATED 15.07.2022 IN G.A. NO. 48/(18)2022/D1
- Exhibit P4 TRUE COPY OF ORDER DATED 29.07.2022 IN G.A. NO. 48/(18) 2022/D1 PASSED BY THE 2ND RESPONDENT
- Exhibit P5 TRUE COPY OF APPEAL MEMORANDUM GA NO. 39/234/2023/B6 FILED BY 1ST RESPONDENT BEFORE 3RD RESPONDENT DATED 20.03.2023
- Exhibit P6 TRUE COPY OF COMMENTS DATED 02.05.2023 FILED BY PETITIONER BEFORE THE 3RD RESPONDENT
- Exhibit P7 TRUE COPY OF APPEAL MEMORANDUM GA NO. 39/246/2023/B6 DATED 02.05.2023 FILED BY PETITIONER BEFORE 3RD RESPONDENT
- Exhibit P8 TRUE COPY OF ORDER DATED 27.06.2023 ALLOWING EXT P5 APPEAL FILED BY THE 1ST RESPONDENT

RESPONDENT'S EXHIBITS

- Exhibit R1(a) True copy of the appointment order of the petitioner dated 07.09.2006