IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

TUESDAY, THE 7TH DAY OF JULY 2026 / 16TH ASHADHA, 1948

WP(C) NO. 2393 OF 2017

PETITIONER:

P. GOPINATHAN,
AGED 70 YEARS, S/O.SANKUNNI NAIR,
'HARIKRIPA' HOUSE, BEHIND KSRTC STAND,
MAVOOR ROAD, KOZHIKODE, PIN-673 001.

BY ADVS.
SRI.P.B.KRISHNAN (SR.)
SRI.P.M.NEELAKANDAN
SRI.S.NITHIN (ANCHAL)
SRI.SABU GEORGE
SRI.P.B.SUBRAMANYAN

RESPONDENTS:

1 UNION OF INDIA,
REPRESENTED BY ITS SECRETARY TO THE GOVERNMENT,
MINISTRY OF LABOUR AND EMPLOYMENT, RAFI MARG,
NEW DELHI-110 007.

2 STATE OF KERALA,
REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM.695 001.

3 CONTROLLING AUTHORITY UNDER THE PAYMENT OF
GRATUITY ACT,
1972 (DEPUTY LABOUR COMMISSIONER, KOZHIKODE),
OFFICE OF THE JOINT LABOUR COMMISSIONER,
CIVIL STATION, KOZHIKODE-673 001.

*4 S.K.ARYA,
M/S.ECONOMIC TRANSPORT ORGANISATION, 70/1,
MISSION ROAD, BANGALORE-560 027.

* [RESPONDENT NO.4 IS DELETED FROM PARTY ARRAY AS PER ORDER DATED 27/06/2023 IN I.A.1/2023.]

5 M/S ECONOMIC TRANSPORT ORGANISATION,
KOVILVATTOM ROAD, ERNAKULAM-682 018,
REPRESENTED BY ITS REGIONAL MANAGER.

BY ADVS.
SMT.C.G.PREETHA, CGC
SMT.K.MALINI
SMT.O.M.SHALINA, DSGI
SMT.CHITHRA.P.GEORGE (GP)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 07.07.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

"C.R"

JUDGMENT

This writ petition has been filed challenging the constitutional validity of the second proviso to Section 8 of the Payment of Gratuity Act, 1972 (hereinafter referred to as the '1972 Act').

2. The petitioner was an employee of the 5th respondent. The claim of the petitioner for payment of gratuity was adjudicated by the Controlling Authority, namely the 3rd respondent, and it was found that the petitioner was entitled to a sum of Rs.1,88,752/- (One Lakh Eighty-Eight Thousand Seven Hundred and Fifty Two Only) as gratuity, along with statutory interest. Since the 5th respondent failed to remit the amount in terms of the order of the Controlling Authority, revenue recovery proceedings were initiated to recover the amount from the 5th respondent. Consequently, a total of Rs.4,57,219/- (Four Lakh Fifty Seven Thousand Two Hundred and Nineteen Only) [Rs.1,79,764 (after deduction of collection charges)

+ Rs.2,77,455/-] was recovered from the employer, out of which the petitioner was disbursed a sum of Rs.3,77,504/- (Three Lakh Seventy-Seven Thousand Five Hundred and Four Only). According to the statement filed by the 3rd respondent, the amount paid to the petitioner was restricted to the sum of Rs.3,77,504/- (Three Lakh Seventy-Seven Thousand Five Hundred and Four Only) owing to the operation of the second proviso to Section 8 of the 1972 Act, which provides that interest must be restricted to a maximum of the gratuity found payable to the employee. The petitioner is thus before this Court challenging the second proviso to Section 8 of the 1972 Act.

3. The learned counsel for the petitioner contends that the second proviso to Section 8 of the 1972 Act is unconstitutional and is liable to be struck down. It is submitted with reference to the provisions of Section 7 of the 1972 Act, that there is no restriction in Section 7 of the 1972 Act for recovery and payment of any amount in

excess of the amount of gratuity towards interest and such a restriction has been brought only by way of the second proviso to Section 8 of the 1972 which provides for the recovery of the amount of gratuity as determined by the Controlling Authority/Appellate Authority. It is submitted that where the employer is to pay the amount determined by the Controlling Authority/Appellate Authority without recourse to the recovery proceedings under Section 8 of the 1972 Act, the employees are entitled to interest exceeding the amount of gratuity, and therefore, the provisions of the second proviso to Section 8 of the 1972 Act are liable to be struck down on the ground that they violate Article 14 of the Constitution of India. It is submitted that in the facts of the present case, though a sum of Rs.4,57,219/- (Four Lakh Fifty-Seven Thousand Two Hundred and Nineteen Only) was recovered from the employer, only a sum of Rs.3,77,504/- (Three Lakh Seventy-Seven Thousand Five Hundred and Four Only) has been paid to the petitioner.

4. The learned Government Pleader contends that a statutory provision can be struck down only on well-settled grounds. It is submitted that the contention of the petitioner that there is no restriction on the payment of interest in terms of the provisions of Section 7 of the 1972 Act cannot be sustained. It is submitted that going by the provisions of sub-section (3A) of Section 7 of the 1972 Act, gratuity can be recovered with simple interest at a rate not exceeding the rate notified by the Central Government from time to time for the repayment of long-term deposits. It is submitted that the provisions of Section 7 of the 1972 Act must be read along with the provisions of Section 8 of the 1972 Act and the amount of interest payable by virtue of the provisions contained in sub-section (3A) of Section 7 of the 1972 Act cannot, at any rate, exceed the maximum interest permissible under the second proviso to Section 8 of the 1972 Act. It is submitted that the petitioner has not made out any case for striking down the second proviso to Section 8 of the

1972 Act on the ground that it is in violation of the fundamental rights of the petitioner under Article 14 of the Constitution of India.

5. The learned Deputy Solicitor General for India also supports the contentions taken by the learned Government Pleader and contends that no ground has been made out for striking down the second proviso to Section 8 of the 1972 Act.

6. Having heard the learned counsel appearing for the petitioner, the learned Government Pleader and the learned Deputy Solicitor General for India appearing for the Union of India, I believe that the petitioner is not entitled to the relief of striking down the second proviso to Section 8 of the 1972 Act. The principal contention taken by the learned counsel for the petitioner is that when there is no restriction on the amount of interest payable in terms of the provisions contained in sub-section (3A) of Section 7 of the 1972 Act, no such restriction can be placed when recovery is effected under Section 8 of the 1972 Act. It is

his case that if such a distinction is recognised, the second proviso to Section 8 would be unconstitutional and violative of Article 14 of the Constitution of India. This submission of the learned counsel for the petitioner cannot be accepted. Firstly, it must be noted that under sub-section (3A) of Section 7 of the 1972 Act, simple interest is payable on the gratuity amount determined by the Controlling Authority/Appellate Authority. This interest is calculated at such rates as the Central Government may, by notification, specify from time to time for the repayment of long-term deposits. There is nothing in Section 7 or sub-section (3A) of Section 7 of the 1972 Act that would indicate that the restriction contained in the second proviso to Section 8 of the 1972 Act, which provides that the total interest shall not exceed the amount of gratuity, is not applicable when interest is paid pursuant to a determination under Section 7 of the 1972 Act. A statutory provision can be struck down only on well-settled grounds, namely, (i) violation of fundamental rights, (ii) lack of legislative competence, (iii) violation of the basic structure of the Constitution or (iv) 'manifest arbitrariness' (as laid down in the judgment of the Supreme Court in ***Shayara Bano v. Union of India and others; 2017 (9) SCC 1***). The second proviso to Section 8 of the 1972 Act restricts the amount of interest payable on the gratuity determined by the Controlling Authority/Appellate Authority. It is a matter of legislative policy that the interest payable should be restricted to, and must not exceed, the total amount of the determined gratuity. The imposition of such a restriction as a matter of legislative policy[1] cannot be struck down on the ground that it is violative of the fundamental rights of the petitioner under Article 14 of the Constitution of India, especially when I have concluded that there is nothing in Section 7 of the 1972 Act which would indicate that the restriction in the second proviso to

1The concept that interest should not exceed the amount of principal is not alien to our jurisprudence. The principle was part of ancient Hindu Law and was referred to as 'The Rule of Damdupat '- the amount of interest charged cannot exceed the principal amount of the debt. However the Rule is not applicable in the absence of statutory recognition.

Section 8 of the 1972 Act is not applicable when gratuity is determined and paid along with interest in terms of the provisions contained in Section 7 of the 1972 Act.

7. There is yet another aspect of the matter. It is settled that the Court must read a statute as a whole, and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Justice G.P Singh in his seminal work - ***Principles of Statutory Interpretation (12th Edition)*** refers to the words of Lord Halsbury in ***Charles Robert Leader v. George F. Duffey, [L.R.] 13 App. Cas. 294*** where he said "*you must look at the whole instrument inasmuch as there may be inaccuracy and inconsistency; you must, if you can, ascertain what is the meaning of the instrument taken as a whole in order to give effect, if it be possible to do so, to the intention of the framer of it.*" The learned author also refers to ***Dormer v. Newcastle-upon-Tyne Corp., (1940) 2 K.B. 204*** *and states "it must not be lightly*

assumed that 'Parliament had given with one hand what it took away with the other'." The learned author has also referred to the words of Justice T. L Venkatarama Ayyar in ***Venkataramana Devaru v. State of Mysore, (1957) 3 SCC 385*** (a decision of a bench of 5 Judges) where it was held:-

> *"31. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. ....."*

On the authority of the aforesaid, I must attempt a harmonious construction of the provisions of Section 7 of the 1972 Act and the second proviso to Section 8 of the 1972 Act. When I do so, I see no conflict between the provisions.

8. The petitioner also has no case that the provisions are beyond legislative competence or in violation of the basic structure of the Constitution. The petitioner also does not have a case that the provisions which have been challenged are manifestly arbitrary.

The writ petition fails, and it is accordingly dismissed.

Sd/-
GOPINATH P.
JUDGE

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APPENDIX OF WP(C) NO. 2393 OF 2017

PETITIONER'S EXHIBITS

EXHIBIT P1	**A TRUE COPY OF THE ORDER DATED 29.4.2014 IN GRATUITY CASE NO.36 OF 2011 BEFORE THE COURT OF THE CONTROLLING AUTHORITY UNDER THE PAYMENT OF GRATUITY ACT, 1972 (DEPUTY LABOUR COMMISSIONER, KOZHIKODE).**
EXHIBIT P2	**A TRUE COPY OF THE LETTER DATED 8.7.2016 ISSUED BY THE SPECIAL TAHASILDAR(RR), KANAYANNOOR TALUK OFFICE TO THE PETITIONER.**
EXHIBIT P3	**A TRUE COPY OF THE TREASURY CHEQUE DATED 20.12.2016 ISSUED BY RESPONDENT NO.3.**
EXHIBIT P4	**A TRUE COPY OF THE LETTER DATED 4.1.2017 ISSUED BY RESPONDENT NO.3 TO THE PETITIONER.**