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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE M.A.ABDUL HAKHIM

WEDNESDAY, THE 3<sup>RD</sup> DAY OF APRIL 2024 / 14TH CHAITHRA, 1946

WP(C) NO.10071 OF 2016

PETITIONER :-

THE KMML RTIRED OFFICERS ASSOCIATION REG NO Q 561/07  
ALTHARAMOODU, VADY, KOLLAM,  
REPRESENTED BY ITS PRESIDENT K.VIJAYADS.

BY ADV SRI.R.RAJASEKHARAN PILLAI

RESPONDENTS :-

- 1 THE STATE OF KERALA  
REPRESENTED BY THE PRINCIPAL SECRETARY,  
INDUSTRIES DEPT., GOVT.SECRETARIAT,  
THIHRUVANANTHAPURAM, PIN - 695 001.
- 2 THE SECRETARY  
LABOUR DEPARTMENT, GOVT.SECRETARIAT,  
THIRUVANNATHAPURAM, PIN - 695 001.
- 3 KERALA MINERALS AND METALS LTD.  
SANKARAMANGALAM, CHAVARA, KOLLAM - 691 583,  
REPRESENTED BY ITS MANAGING DIRECTOR
- 4 THE BOARD OF DIRECTORS  
KERALA MINERALS AND METALS LTD.,  
SANKARAMANGALAM, PIN - 691 583  
REPRESENTED BY THE CHAIRMAN.

BY SMT.LATHA ANAND, SC  
SMT. K.B SONY -GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION  
ON 03.04.2024, THE COURT ON THE SAME DAY DELIVERED THE  
FOLLOWING:

"CR"

**JUDGMENT**

**Dated this the 3<sup>rd</sup> day of April, 2024**

1. The petitioner is an Association of retired employees of the Respondent No.3. According to the petitioner, there is discrimination in the matter of payment of gratuity on the retirement of its members on the ground that the benefit of increase of ceiling limit of gratuity amount in Section 4(3) of the Payment of Gratuity Act, 1972 from Rs.3.5 Lakhs to Rs.10 lakhs as per the Amendment dated 24.5.2010 was not extended to them, though the same was extended to the employees of several state owned companies, PSUs and Central Government employees giving retrospective effect of the Amendment dated 24.5.2010 from 1.1.2006 and 1.1.2007. They were paid gratuity on the basis of unamended Section 4(3) which fixed the ceiling limit at Rs.3.5 lakhs.

2. The petitioner Association submitted Exts.P4 and P6 Representations before the Respondent No.1 in the matter. Since no action was taken by the Respondent No.1, the petitioner approached this Court and as per Ext.P8 judgment, this Court directed the Respondent No.1 to consider Exts.P4 and P6 Representations and in compliance with the directions in Ext.P8 judgment, the Respondent No.1 passed Ext.P9 order, but rejecting the claim of the petitioner Association. According to the petitioner, it has filed Ext.P10 Review Petition

seeking to review Ext.P9, the same is pending consideration before the Respondent No.1 and the Respondent No.1 has been refusing to dispose of Ext.P10 Review Petition. The petitioner filed this writ petition seeking to quash Ext.P9 order, to direct the Respondents to sanction Twenty Months' salary as gratuity to the employees of the Respondent No.3 retrospectively as in the case of PSUs like Exts.P1 and P2, seeking direction to consider Ext.P10 Review Petition and for other reliefs.

3. Heard the learned counsel for the petitioner, learned Government Pleader appearing for the Respondents Nos. 1 and 2 and the learned Counsel appearing for respondents Nos.3 and 4.

4. The issue to be decided in this Writ Petition is, whether the members of the petitioner Association are entitled to get the benefit of the Amendment dated 24.5.2010 to Section 4(3) of the Payment of Gratuity Act, increasing the ceiling limit from Rs.3.5 lakhs to Rs.10 lakhs. Admittedly, the members of the petitioner Association retired before the date of implementation of the said Amendment. So, the members of the petitioner were paid gratuity in accordance with the unamended provision.

5. The Counsel for the petitioner argued that several state owned companies, PSUs and Central Government employees have given the benefit of the

Amendment retrospectively with effect from 1.1.2006 and 1.1.2007. He referred to Exts.P1 and P2 in this regard with respect to two of such establishments. According to him, the Respondent No.3, though fully owned, controlled and managed by the Respondent No.1/State and a public Sector Undertaking, has discriminated the members of the petitioner Association in the matter of granting the benefit of the Amendment increasing the ceiling limit of gratuity to Rs.10 lakhs. The Representations submitted by the petitioner were rejected by Ext.P9 order by the Respondent No.1 without properly considering the contentions raised by the petitioner and hence he prayed for direction to extend the benefits of Amendment to the members of the petitioner Association or direction to consider Ext.P10 Petition for Review .

6. On the other hand, the Counsel for the Respondents Nos. 3 and 4 defended the case arguing that the members of the petitioner who were retired from the service of the Respondent No.3 are not entitled to claim gratuity on a scale brought into force by Amendment after their retirement and those persons were paid gratuity as per the law which was existing as on the dates of their respective dates of retirement. The Respondent No.3 is not bound by the action on the part of other establishments extending better terms of gratuity to their employees. He relied on Section 4 (5) of the Payment of Gratuity Act in this regard.

7. The Learned Government Pleader also made submissions in support of the Respondents Nos. 3 and 4 stating that the Respondent No.1 passed Ext.P9 Order after considering all the relevant inputs and the reasons stated therein are well founded.

8. I hold that the Respondent No.1 has entered cogent reasons to reject the prayer of the petitioner. In Ext.P9, the Respondent No.1 has specifically found that different PSUs have different rates of allowances depending on their financial status and profitability of the companies and that the Amendment to Section 4(3) of the Payment of Gratuity Act, 1972 has only prospective effect from 24.5.2010 and thus rejected the Request of the petitioner finding that it does not find any justification to agree with the prayer of the petitioner. I find no reasons to interfere with Ext.P9 Order passed by the Respondent No.1.

9. Section 4(5) of the Payment of Gratuity Act provides that *'nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer'*. I am of the view that extending better terms of gratuity is matter to be decided by the employer taking into account several relevant factors. The employees cannot claim better benefits as of right. Of course, the employees can negotiate with the employer to persuade the employer to extend better benefits of gratuity to them. The

Respondent No.3 being public sector undertaking, the petitioner can request the Respondent No.1 to intervene in the matter to mediate. But even the Respondent No.1 has no authority to order the Respondent No.3 to extend better benefits of gratuity. The members of the petitioner were paid gratuity as per the law prevailing as on the dates of their respective retirements. The petitioner's demand for retrospective implementation of the Amendment Act is not supported by any legal ground.

10. In view of Section 4(5), nothing prevents the Respondent No.3 from giving better benefits of gratuity to its employees if it is doing it willingly. I am of the view that the Respondent No.3 cannot be compelled to give better benefits of gratuity to its employees merely because other like employers have extended better benefits of gratuity to their employees.

11. Even though, the petitioner has submitted Ext.P10 Petition to review Ext.P9 order, I am not inclined to direct the Respondent No.1 to consider the same. Review like an appeal is a creature of Statute. Power of review cannot be assumed or presumed or conferred. It is to be expressly conferred on the authority. Even if it is assumed that the State Government has power to pass Ext.P9 order, the power to entertain Review is absent. It is well settled by the decision of the Hon'ble Supreme Court in **Haryana State Industrial**

**Development Corporation Ltd. v. Mawasi & Others** [(2012) 7 SCC 200] that power of review is a creature of Statute and no Court or Quasi-judicial Body or Administrative Authority can review its judgment or order or decision when it is not legally empowered to do so. In **Binabai Bhate v. State of Madhya Pradesh and Ors.** [2011 (13) SCC 32], the Hon'ble Supreme Court held that power of review against an order passed is a creature of the Statute and since no such power of review is provided for, the High Court was justified in holding that there could be no review of the order passed. In the decision of the Hon'ble Supreme Court in **Assistant Commercial Tax Officer v. M/s. Makkad Plastic Agencies** [(2011) 4 SCC 750] it is held that order of review could be passed only when an express power is provided in the Statute. In the decision of the Hon'ble Supreme Court in **Kalabharati Advertising v. Hemant Vimalnath Narichania & Ors.** [2010 (9) SCC 437] it is held that Court cannot confer jurisdiction on any authority and that conferring jurisdiction on a Court/Tribunal/Authority is a legislative function and the same cannot be conferred either by the Court or by the consent of parties. The remedy of Review can be invoked only when it is specifically provided by law. A Writ of mandamus can be issued against an Authority only if there is a duty on the said Authority and the Authority has refused to discharge the same. Here, there is no duty on the part of the Respondent No.1 to consider Ext.P10 Petition for Review. Hence this Court is not justified to direct consideration of Ext.P10 Petition for review .

12. Hence no reliefs can be granted in this Writ Petition. Accordingly, I dismiss this writ petition.

**Sd/-  
M.A.ABDUL HAKHIM  
JUDGE**

Jvt/5.4.2024



**APPENDIX OF WP(C) 10071/2016**

**PETITIONER EXHIBITS :-**

**EXT.P1: TRUE COPY OF THE RULES FOR PAYMENT OF GRATUITY FOR TRAVANCORE TITANIUM PRODUCTS.**

**EXT.P2: TRUE COPY OF THE RULES FOR PAYMENT OF GRATUITY TRAVANCORE COCHIN CHEMICALS LTD.**

**EXT.P3: TRUE COPY OF THE INFORMATION REGARDING THE RETROSPECTIVE APPLICATION OF THE AMENDMENT OBTAINED UNDER RIGHT TO INFORMATION ACT FROM THE CHAIRMAN AND MANAGING DIRECTOR OF INDIAN RARE EARTHS.**

**EXT.P4: TRUE COPY OF THE REPRESENTATION DATED 16.12.2010 SUBMITTED BY THE PETITIONER ASSOCIATION.**

**EXT.P5: TRUE COPY OF THE COMMUNICATION DATED 31.12.2010 FROM THE CENTRAL GOVT.**

**EXT.P6: TRUE COPY OF THE REPRESENTATION DATED 5.2.2011 SUBMITTED BY THE PETITIONER ASSOCIATION BEFORE THE HON'BLE CHIEF MINISTER AND OTHER MINISTERS AND RESPONDENTS.**

**EXT.P7: TRUE COPY OF THE OFFICE MEMORANDUM DATED 2.9.2008 OF THE CENTRAL GOVT.**

**EXT.P8: TRUE COPY OF THE JUDGMENT DATED 7.9.2015 IN WP(C) NO.6312/2011 OF THIS HON'BLE COURT.**

**EXT.P9: TRUE COPY OF THE ORDFER G.O.(RT) NO.1263/2015/ID DATED 28.11.2015.**

**EXT.P10: TRUE COPY OF THE REVIEW PETITION DATED 10.12.2015 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.**