



2023/KER/50801
[CR]

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

MONDAY, THE 21ST DAY OF AUGUST 2023 / 30TH SRAVANA, 1945

OP (CAT) NO. 72 OF 2022

AGAINST THE ORDER DTD.27.9.2022 IN OA 326/2020 OF

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/RESPONDENTS 1 & 2:

- 1 HINDUSTAN ORGANIC CHEMICALS LTD.,
OFFICE NO.401, 402 & 403, U TIME SQUARE,
PLOT NO.3, SECTOR 15, CBD BELAPUR,
NAVI MUMBAI- 400614 REPRESENTED BY ITS
CHAIRMAN & MANAGING DIRECTOR.
- 2 THE GENERAL MANAGER (HR),
FORMERLY THE CHIEF PERSONNEL & ADMINISTRATIVE
MANAGER, HINDUSTAN ORGANIC CHEMICALS LTD.,
AMBALAMUGAL, KOCHI - 682302.
BY ADVS.J.SURYA
E.K.MADHAVAN
V.KRISHNA MENON
PRINSUN PHILIP

RESPONDENTS/APPLICANTS & 3rd RESPONDENT:

- 1 LISSIAMMA JAMES,
AGED 53 YEARS, W/O P.C.JAMES,
PODIPARAYIL HOUSE, MONKOMBU, CHOVOOR P.O.,
KOTTAYAM DISTRICT, PIN - 686586.
- 2 SRUTHY JAMES D,
AGED 22 YEARS,
D/O P.C.JAMES, PODIPARAYIL HOUSE, MONKOMBU,
CHOVOOR P.O., KOTTAYAM DISTRICT, PIN - 686586.
- 3 THE COMMISSIONER FOR PERSONS WITH DISABILITIES,
MINISTRY OF SOCIAL JUSTICE AND EMPOWERMENT,
GOVERNMENT OF INDIA, NEW DELHI, PIN - 110001.
BY ADVS.JOJO JOSEPH
ELIZEBATH GEORGE
K.C.VINCENT

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 18.08.2023,
THE COURT ON 21.08.2023 DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C.JAYACHANDRAN, JJ.

O.P.(CAT) No.72 of 2022

Dated this the 21st day of August, 2023

JUDGMENT

C. Jayachandran, J.

The facts herein reveal the saga of an employee, who met with a serious accident during the course of employment, his post trauma claims remaining unresolved at the time of his death after 14 years of the accident and even now.

2. Hindustan Organic Chemicals Limited (HOCL, for short) and its General Manager are the petitioners herein. The legal heirs of one Sri.P.C.James, the victim of the accident, are respondents 1 and 2 and the 3rd respondent is the Commissioner for Persons with Disabilities. The petitioners impugn the Order dated 27.09.2022 of the Central Administrative Tribunal, Ernakulam Bench in O.A.No.326/2020, which allowed the Original Application, directing the petitioners



herein to disburse the arrears of salary and other benefits due to Sri.P.C.James to his legal heirs, deeming him to be in service from 01.01.2008 till his death on 12.09.2019. The said Order, marked as Ext.P6 herein, is under challenge in the instant Original Petition.

3. The facts:

The following list of dates and events will unfurl the facts, which led to the Original Petition afore referred:

<u>Sl. No.</u>	<u>Date</u>	<u>Event</u>	<u>Ext. No.</u>
1	23.03.1996	Sri.P.C.James joined the service of the petitioner Company as Workman Grade-III.	
2	16.08.2005	Sri.P.C.James, along with two other employees, suffered electric shock at their work place during the course of employment. While P.C.James suffered serious burn injuries, two others succumbed.	



3	26.09.2007	The Medical Trust hospital, where Sri.P.C.James underwent treatment, issued Medical Certificate certifying 100% disability [70% on (L) leg amputation and 30% on (R) forefoot amputation], besides certifying that he cannot attend usual mechanical job on account of severe limitation of hand function.	Ann.R1(a)2 = Ext.P2(7)
4	31.12.2007	The Company paid full salary to Sri.P.C.James up to 31.12.2007, treating him as regularly employed, though he could not report for duty because of the serious injuries.	
5	02.09.2008	Sri.P.C.James preferred application - W.C.C. No.74/2008 - before the Commissioner of Workmen's Compensation, claiming a lump sum amount of Rs.4,21,296/- as compensation.	Ann.A4 = Ext.P1(17)
6	16.09.2009	Ann.A4 application was allowed by the Workmen's compensation Commissioner, granting the above amount as compensation, taking into account the settlement between the parties.	Ann.A5 = Ext.P1(20)



7	29.10.2010	The Medical Board issued Disability Certificate to Sri.P.C.James, certifying 70% disability.	Ann.A2 = Ext.P1 (15)
8	25.08.2012	In a claim preferred by Sri.P.C.James before the National Human Rights Commission (NHRC), the petitioner Company filed reply statement.	Ann.A6 = Ext.P1 (22)
9	31.05.2014	The petitioner Company claims that Sri.P.C.James filed application for disbursement of gratuity and PF amount.	Ann.A11 = Ext.P1 (34)
10	01.10.2014	The petitioner Company produced for the first time before CAT a relieving order dated 01.10.2014, indicating that Sri.P.C.James was relieved from services w.e.f. 31.12.2007.	Ext.P5 (3)
11	15.11.2014	Amounts due under the PF account was disbursed to Sri.P.C.James.	Pleaded in paragraph no.10 of Ann.A8 comments of the petitioner Company



12	16.12.2014	Sri.P.C.James preferred an application before the Commissioner for Persons with Disabilities, seeking disability benefits.	Ann.A7 = Ext.P1(24)
13	04.08.2015	The petitioner Company offered comments to Ann.A7 application.	Ann.A8 = Ext.P1(28)
14	30.03.2017	The Chief Commissioner closed Ann.A7 application without granting any relief, on the premise that Sri.P.C.James cannot claim the benefits prior to the date of issuance of Ann.A2 Disability Certificate, i.e., 29.10.2010. In this regard, the Commissioner relied upon Ann.A10 O.M. dated 10.06.2009 issued by the Department of Personnel and Training.	Ann.A9 = Ext.P1(32) & Ann.A10 = Ext.P1(33)
15	27.04.2018	The petitioner Company disbursed the gratuity due to Sri.P.C.James, by crediting the same to his account.	Pleaded in paragraph no.2 of Ext.P4 additional reply statement of the petitioner Company
16	12.09.2019	Sri.P.C.James passed away. He was due to superannuate only on 30.6.2020.	



17	23.01.2020	W.P. (C) No.19549/2019 preferred by the LRs of Sri.P.C.James seeking quashment of Ann.A9 Order and the protection under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act, for short) was dismissed in view of the establishment of the Administrative Tribunals, reserving the Right to approach the Tribunal.	Ann.A12 = Ext.P1 (36)
18	11.06.2020	The LRs filed O.A. before CAT, Ernakulam Bench, seeking salary arrears and other benefits due to Sri.P.C.James under the provisions of the PWD Act, 1995.	Ext.P1
19	27.09.2022	O.A. was allowed directing the petitioner Company to disburse the arrears of salary and other benefits due to Sri.P.C.James treating him in deemed service from 01.01.2008 till 12.09.2019.	Ext.P6

4. Heard Sri.V.Krishna Menon, learned counsel for the petitioners and Sri.K.C.Vincent, learned counsel for the respondents.



5. The first and foremost point argued by the learned counsel for the petitioner is based on Annexure-A9 Order of the Commissioner for Persons with Disabilities, which found that Sri.P.C.James is not entitled to any benefit meant for persons with disabilities prior to the date of issuance of Annexure-A2 Disability Certificate from the Medical Board and closed his complaint accordingly, finding that no further intervention is required in the matter. The learned counsel would submit that Annexure-A9 was challenged by the LRs of Sri.P.C.James before this Court, which culminated in Annexure-A12 judgment dated 23.01.2020. As per Annexure-A12, the said writ petition was closed, reserving the right of the petitioners/LRs to move the Administrative Tribunal. Although the Administrative Tribunal was moved in Ext.P1 O.A, a relief to set aside Annexure-A9 was not sought for, wherefore, Annexure-A9 has become final. Thus, according to the learned counsel, the respondents herein (LRs of Sri.P.C.James) had exhausted the remedy under the P.W.D Act, by virtue of Annexure-A9 and the relief granted by the Tribunal in disregard of Annexure-A9 cannot be sustained. To buttress this argument, learned counsel for the petitioners relied upon a Full Bench judgment of this



Court in ***Pavithran v. State of Kerala*** [2009 (4) KLT 20 (F.B.)] to point out that in the absence of a valid challenge, an Order like Annexure-A9, even assuming it is not fully legal, will be valid and binding between the parties, since administrative law contemplates only voidable orders and not void orders.

6. Secondly, the learned counsel emphasised on Annexure-A11 application of Sri.P.C.James seeking disbursement of gratuity and PF amounts, and also on Ext.P5(3) relieving order, to contend that Sri.P.C.James stood relieved from the services of the petitioner Company with effect from 31.12.2007 and that all retiral benefits due to him stand disbursed. The present claim, therefore, at the instance of the LRs, is only an afterthought and the same cannot be recognised in law, is the contention. The third aspect argued by the learned counsel is based on Annexure-A5 Order of the Workmen's Compensation Commissioner, as per which, an amount of Rs.4,21,296/- was granted as compensation, pursuant to an agreement between the petitioner Company and Sri.P.C.James. Therefore, Sri.P.C.James is estopped from claiming any further amount, according to the learned counsel



for the petitioners. It was finally argued by the learned counsel that the findings of the Tribunal insofar as Ext.P5(3) relieving order is concerned, as also, in the matter of granting reliefs, is far in excess of the Tribunal's jurisdiction, warranting interference from this Court.

7. Per contra, the learned counsel for the respondents 1 and 2 contended that Annexure-A9 order of the Disability Commissioner is not final or binding, inasmuch as no factual issue has been determined vide Annexure-A9; nor is the Disability Commissioner an adjudicatory body, with powers to finally determine the issue of compensation under the P.W.D Act. Moreover, Annexure-A9 is also illegal for the reason that it wrongly placed reliance upon Annexure-A10 O.M, which is issued for a different purpose, altogether. Moreover, the factum of disability of Sri.P.C.James was quite known to the petitioner Company, wherefore, the date of formal production of a Disability Certificate cannot be decisive, as regards the time frame for the respondents to seek relief. At any rate, Annexure-A9 specifically recognise the entitlement of Sri.P.C.James for appropriate remedy atleast from 2010 onwards. The learned counsel would also submit that the petitioners



are duty bound to extend the benefit due under the P.W.D Act to Sri.P.C.James and it is no excuse in law that Sri.P.C.James had not specifically asked such benefits; *dehors* and independent of the fact that Sri.P.C.James was all along pursuing the remedies before various Fora.

8. Having heard the learned counsel appearing for both sides, we find little merit in the instant Original Petition. Before addressing the legal issues involved, we will first take stock of the admitted factual aspects. Sri.P.C.James, along with two other employees, suffered electric shock in the premises of the petitioner company during the course of employment on 16.8.2005, P.C.James suffering serious burn injuries, while the two others succumbed. As regards the extent of the disability also, there is no quarrel. Annexure.R1(a)(2) medical certificate issued from the hospital, where Sri.P.C.James underwent treatment, certifies 100% disability, 70% attributable to amputation below knee of (L) leg and 30% to forefoot amputation (R) foot. This is specifically admitted in Annexure-A6 reply of the petitioner company before the NHRC, as also, in Ext.A8 comments offered by the company



to the Chief Commissioner for Persons with Disabilities. Upto 31.12.2007, Sri.P.C.James was paid full salary by the petitioner company treating him as regularly employed. Annexure-A4 application preferred by Sri.P.C.James before the Workmen's Compensation Commissioner was allowed vide Annexure-A5 and a sum of Rs.4,21,296/- was granted as compensation.

9. With the above prelude, we will now address the points raised by the learned counsel for the petitioners.

10. Whether Annexure-A9 has become final, so as to deprive respondents 1 and 2 herein from claiming the benefits under the PWD Act?

For a correct appreciation of this issue, it is necessary to address the scheme of the Act generally; and particularly, the powers of the Commissioner for Persons with Disabilities, as envisaged in the PWD Act.



11. Inasmuch as the disability occurred pursuant to the accident on 16.8.2005, the PWD Act, 1995 is applicable to the instant facts, since the amended Act (Act 49 of 2016) came into force w.e.f. 19.4.2017 only. The PWD Act, 1995 was promulgated in accord with the Proclamation on the Full Participation and Equality of People with Disabilities made in the meeting convened on 1st to 5th of December, 1992 by the Economic and Social Commission for Asia and Pacific, held at Beijing, to which proclamation India was a signatory. The Act purports to give effect to that proclamation. Locomotor disability is a specie among the various disabilities defined in Section 2(i). 'Person with disability' is defined under Section 2(t) to mean a person suffering from not less than 40% of any disability, as certified by a Medical Authority. Section 47 of the 1995 Act is relevant and extracted here below:-

“47.Non-discrimination in Government employments.-
(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:



Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

12. It is clear from the above extracted provision that, an employee who acquires a disability during service cannot be dispensed with or reduced in rank; and in the absence of a suitable post, he may have to be kept on a supernumerary post until the age of superannuation. Section 57 provides for appointment of Chief Commissioner for Persons with Disabilities and Section 58 speaks of his functions. Section 59 is the provision enabling the Chief Commissioner to look into the complaints with respect to deprivation of rights of persons with disabilities. Section 60 deals with appointment of Commissioners. While Section 61 defines the powers of the Commissioner, Section 62 is the provision enabling to look into the complaints. Inasmuch as



Annexure-A9 is one issued by the Chief Commissioner, we quote Section 59, which delineates the scope of the jurisdiction of the Chief Commissioner in looking into the complaints of persons with disabilities:

***“59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.-Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to -
(a) deprivation of rights of persons with disabilities;
(b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Governments and the local authorities for the welfare and protection of rights or persons with disabilities, and take up the matter with the appropriate authorities.”***

(underlined by us for emphasis)

13. As available in several statutes of a similar nature, the authorities and officers have been given certain powers of the civil court by Section 63 of the Act for summoning and enforcing the attendance of the witnesses; for discovery and production of documents; for requisitioning any public record; for receiving evidence on affidavits; and for issuing Commission for examination of witnesses or



documents. For the purpose of Sections 193 and 228 of the Penal Code, the proceeding before the Chief Commissioner and the Commissioner shall be a judicial proceeding and for the purposes of Section 195 and Chapter XXVI Cr.P.C., the Chief Commissioner and Commissioner shall be deemed to be a civil court.

14. With these input, we will address whether Annexure-A9 communication of the Chief Commissioner is final and binding on Sri.P.C.James, or for that matter his LRs./respondents 1 and 2 herein. Dehors and independent of the legal correctness of the contents of Annexure-A9 - concluding that no further intervention is required in the matter (which we will address shortly) - we are impelled to observe straight away that there is no adjudication involving the determination of rights of the parties in Annexure-A9. In this regard, we will refer to the legal scope of the expression 'adjudication'. Black's Law Dictionary (9th Edition) defines 'adjudication' thus:-

*“**adjudication** 1. The legal process of resolving a dispute; the process of judicially deciding a case. 2. JUDGMENT.”*



15. In the same treatise, the term 'adjudicator' is narrated thus:-

*“**adjudicator.** A person whose job is to render binding decisions; one who makes judicial pronouncements.”*

16. Under the term 'adjudication', the Dictionary also refers to the expression 'former adjudication' which is defined thus:-

*“**former adjudication.** A judgment in a prior action that resulted in a final determination of the rights of the parties or essential fact questions and serves to bar relitigation of the issues relevant to that determination.*
• *Collateral estoppel and res judicata are the two types of former adjudication. See COLLATERAL ESTOPPEL; RES JUDICATA. [Cases: Judgment 540, 634].”*

17. In Advanced Law Lexicon by P.Ramanatha Aiyar (4th Edition) the term 'adjudicate' is defined thus:-

*“**Adjudicate.** To hear or try and determine, as a court; to settle by judicial decree; to adjudge (as). The Court “adjudicated” upon the case.”*

18. The following is the legal meaning assigned to the term 'adjudication':-

*“**Adjudication.** The legal process of resolving a dispute; the process of judicially deciding a case.*

“An adjudication in favour of natural rights”. A solemn or deliberate determination by the judicial power; the act of giving judgment.



The act of adjudicating; the process of trying and determining a case judicially. The application of the law to the facts and an authoritative declaration of the result. (Shumaker, 30)

'Adjudication' is a legal process involving hearing by Court, after notice, consideration of legal evidence and pronouncement of judgment thereon. [Dhandapani, T.K. v. The Chairman and Managing Director, Bank of India, Express Towers, Bombay, (2001) 2 CTC 161: (2001) 2 LLJ 384 (Mad)].

.....

The word "adjudication" means judicial determination of a cause after taking into consideration the material on record and after hearing the parties. Razia Begum v. Iqbal Begum, PLD 1957 Lah 1040 (Pak)."

19. It could thus be seen that an adjudication is the final determination of the rights of the parties, so as to render a binding decision, no matter we call it judgment, order or otherwise. It is a legal process of resolution of a dispute, or in other words, a solemn or deliberate determination by the judicial power. It ordinarily involves a trial, consideration of legal evidence and an opportunity of hearing to the parties. A perusal of Annexure-A9 would not reveal any of the above referred concomitant ingredients of an adjudication. This is for the reason that the PWD Act does not contemplate an adjudication at the hands of the Chief Commissioner, or for that matter, the Commissioner. The enabling power itself is only 'to look into



complaints' and to 'take up the matter with the appropriate authorities'. We may pause here for a moment to notice the changes brought in to Section 76 of the 2016 Act dealing with the rights of Persons with Disabilities, which is corresponding to Section 59 of the old Act of the year 1995. As per Section 76, the Chief Commissioner can make a recommendation to an authority and the latter shall take necessary action on it, with a further duty to inform the action taken to the Chief Commissioner. Although the scope of the Chief Commissioner's power has been enlarged by mandating an action on the recommendation, still the fact remains that the power of the Chief Commissioner is only to make a "recommendation" to the authority concerned. We need only notice that the power under the old Act of 1995 is much limited in comparison with the power under Act 49 of 2016. For the mere reason that certain powers of a civil court is bestowed upon the authorities under the Act, that too for the limited purpose of an effective discharge of their functions, would not clothe the Chief Commissioner or the Commissioner with the trappings of a civil court. Nor would there conclusions, as in Annexure-A9, would assume the legal character of a judgment/order binding inter-parties.



We, therefore, reject the contention of the petitioners that Annexure-A9 bars all further remedy of Sri.P.C.James or his LR's.

20. Coming to facts as contained in Annexure-A9, we notice that the Chief Commissioner had not made any determination of the rights of the parties, but merely closed the complaint based on Annexure-A10 O.M. of the Department of Personnel and Training dated 10.6.2009. Even the reliance placed upon Ext.A10 to close the complaint is also prima facie unsustainable, for the reason that the said O.M. is issued in clarification, as to whether a person who acquires disability after entering Government service will get the reservation in services as provided in another O.M. dated 29.12.2005. Clarifying the entitlement in the affirmative, the O.M. concludes that such an employee is also entitled to get the benefit of reservation from the date he produces a valid certificate of disability. Here, we need to notice that the thrust is not on the date on which such benefit is liable to be recognized, but on the clarification that a person who acquires disability after entering into service is also entitled for the benefit. Be that as it may. Still further, we notice that Annexure-A9 is silent as regards the



entitlement of Sri.P.C.James at least from the date of production of Annexure-A2 medical certificate dated 29.10.2010. For these reasons as well, we are of the firm opinion that Annexure-A9 cannot conclude or estop the rights of Sri.P.C.James. In the light of the above finding, we dismiss the further plea that in the absence of a valid challenge to Annexure-A9, the grant of benefits vide the impugned Ext.P6 order is bad in law.

21. The second question which requires consideration is:

Whether Ext.P5(3) relieving order produced by the petitioners before the Administrative Tribunal is a valid and genuine document; whether the findings of the Tribunal on Ext.P5(3) warrants any interference?

We will first take note of the findings of the learned Tribunal in this regard, as contained in paragraph nos.18, 19 and 20 of the impugned Ext.P6 order, which are extracted here below:-

“18. James died on 12.09.2019. When the applicants pursued the matter, at the last lap of these proceedings, on 01.07.2022 they have turned up with a relieving order dated 01.10.2014 stating that he stood relieved with effect from 31.12.2007. In fact, this Tribunal takes this conduct very seriously and have



reasons to believe that the 2nd respondent was handling the matter in a light-hearted and irresponsible manner. When Annexure- A8 comments were made before the Commissioner for Persons with Disabilities on 4.08.2015, they had no case that he stood relieved with effect from 31.12.2007. This was first stated by them in the reply statement on 05.02.2021. Whatever it may be, it is beyond comprehension as to how an employee could be relieved with retrospective effect, that too after a lapse of seven years.

19. Moreover, the relieving order dated 01.10.2014 is a cryptic one stating that 'Sri.P.C.James, Pers.No.11408068, General Workman Grade-III stands relieved from the services of HOCL with effect from 31.12.2007 (AN)'. When a permanent employee of the company is relieved prematurely, the reasons for such relieving should be shown in the order. Taken in isolation, nothing can be inferred from this document. It is obnoxious and ridiculous that the company had issued such an order on 01.10.2014 relieving a person with effect from 31.12.2007 putting back date more than seven years. It is clearly the result of a second thought, after the said James had approached different fora like National Human Rights Commission and the Commissioner for the Persons with Disabilities for justice, to explain the delay in disbursing the benefits due to him. They also might have realised that unless there is a relieving order, the application for disbursement of gratuity etc. cannot be entertained.

20. The file does not indicate service of such a relieving order on the employee. When queried, the learned standing counsel submitted that it was handed over direct. Still, there must be some acknowledgment. As rightly pointed out by the learned counsel for the applicants, as per S.O.No.51 of the company a workman can be discharged or terminated only after giving due notice after making payment of wages in lieu of such notice as provided under the contract of service. Here, no one has a case that such a notice was served on James. Moreover, a certificate of termination of service as provided under S.O.No.53 is nowhere in the picture. To sum up, such a relieving order was created for the purpose of shielding the lapses of the officials and cannot stand judicial scrutiny."



22. Having perused the findings of the Tribunal, we are of the opinion that no exception, whatsoever, can be taken to the same. Since the appreciation of the facts and the conclusions arrived at by the Tribunal is self-speaking, we do not intend to add anything to such findings. We cannot but approve the same.

23. For the sake of conclusion, we will also address the petitioners' contention based on Annexure-A11 application for disbursement of gratuity and P.F. produced by the petitioner company, as one filed by Sri.P.C.James. Here again, we are not persuaded to attach any credence to Annexure-A11 application. Annexure-A11 application is dated 31.5.2014 and it contains only the thumb impression of Sri.P.C.James. In Clause no.8 in the statement forming part of Annexure-A11, as against the query 'amount of wages last drawn', what is seen stated is '8 years'. Similarly, as against Clause no.9 'amount of gratuity claimed', it is seen stated '(o) (zero)'. Similarly, in the Clause immediately preceding the signature, it is indicated that the amount of gratuity payable is less than Rs.1,000/-, which obviously is not the case



of Sri.P.C.James. Suffice to say that Annexure-A11 cannot conclude the legitimate claims of Sri.P.C.James and the said document cannot estop him from claiming the benefits due under the PWD Act.

24. The third issue to be addressed is:

Whether the grant of compensation under the Workmen's Compensation Act would preclude the reliefs under the PWD Act?

In answer, all what we need to take note is Section 72 of the 1995 Act which stipulates that the PWD Act, 1995 is in addition to and not in derogation of any other law conferring benefits on persons with disabilities. That apart, the Workmen's Compensation Act provides compensation for injury caused by an accident arising out of or during the course of employment, whereas PWD Act affords protection of rights and full participation of persons with disabilities. Both occupies different fields and the remedy availed in one cannot preclude the remedy under the other enactment.

25. Coming back to Section 47 of the PWD Act, 1995, we notice that the language employed in the operative part under Section 47(1),



which interdicts dispensation with or reduction in rank of an employee, who acquires disability during service, is 'shall'. However, the first proviso employs the expression 'could' and the second proviso, 'may'. It is the second proviso, which stipulates that the employee may be kept on a supernumerary post until a suitable post is available or the age of superannuation. Here, we are disinclined to mitigate the rigour of the provision to retain the employee until the age of superannuation by harping upon the expression 'may'. We do take into account that the PWD Act is one intended for the marginalised sector to ensure equal opportunities, protection of rights and full participation of persons with disabilities. One should necessarily bear in mind the very object and purpose of the statute, while interpreting the provisions of the Act. The interpretation to be afforded to a beneficial legislation has been underpinned by the Hon'ble Supreme Court time and again. In **Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation** [(1985) 4 SCC 71], O. Chinnappa Reddy, J. speaking for the Bench spoke thus:



*“4. The principles of statutory construction are well settled. Words occurring in statutes of liberal import such as social welfare legislation and human rights’ legislation are not to be put in Procrustean beds or shrunk to Liliputian dimensions. In construing these legislations the imposture of literal construction must be avoided and the prodigality of its misapplication must be recognised and reduced. Judges ought to be more concerned with the ‘colour’, the ‘content’ and the ‘context’ of such statutes (we have borrowed the words from Lord Wilberforce’s opinion in *Prenn v. Simmonds*). In the same opinion Lord Wilberforce pointed out that law is not to be left behind in some island of literal interpretation but is to enquire beyond the language, unisolated from the matrix of facts in which they are set; the law is not to be interpreted purely on internal linguistic considerations.”*

[Underlined by us for emphasis]

26. In *Surendra Kumar Verma v. The Central Government Industrial Tribunal-Cum-Labour Court* [(1981) 4 SCC 433], the Hon'ble Supreme Court held that 'bread and butter' statutes must, of necessity, receive a broad interpretation.

27. In *Badshah v. Urmila Badshah Godse and another* [(2014) 1 SCC 188], the question before the Hon'ble Supreme Court was the right to maintenance of a second wife, who married her husband during the subsistence of his first marriage, which was but suppressed to her. Confirming the grant of maintenance, A.K.Sikri, J. speaking for the Bench emphasized the need for adopting purposive interpretation while dealing with an application from the marginalized sections of the society. The



Hon'ble Supreme Court held that the purpose is to achieve social justice which is the constitutional vision, enshrined in the preamble of the constitution. Reiterating the duty of the court to advance the cause of justice, it was held that the court while giving interpretation to a particular provision is supposed to bridge the gap between the law and society. In paragraph no.17 of the judgment, the Hon'ble Supreme Court extracted the following excerpts from the classic work of **Benjamin N.Cardozo** titled '*The Nature of the Judicial Process*'.

"....no system of jus scriptum has been able to escape the need of it", and he elaborates: "It is true that Codes and Statutes do not render the Judge superfluous, nor his work perfunctory and mechanical. There are gaps to be filled. There are hardships and wrongs to be mitigated if not avoided. Interpretation is often spoken of as if it were nothing but the search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable pre- existence in the legislator's mind. The process is, indeed, that at times, but it is often something more. The ascertainment of intention may be the least of a judge's troubles in ascribing meaning to a stature."

28. The Hon'ble Supreme Court also referred to and extracted the following from the book '*The Nature and Sources of the Law*' by **John Chipman Gray**:

"The fact is that the difficulties of so-called interpretation arise when the legislature has had no meaning at all; when the question which is raised on the statute never occurred to it; when what the Judges have to do is, not to determine that the



legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.”

29. In **K.H.Nazar v. Mathew.K.Jacob and others** [(2020) 14 SCC 126] the Hon'ble Supreme Court held as under, as regards the construction of beneficial legislation:

*“11. Provisions of a beneficial legislation have to be construed with a purpose-oriented approach. The Act should receive a liberal construction to promote its objects. Also, literal construction of the provisions of a beneficial legislation has to be avoided. It is the court’s duty to discern the intention of the legislature in making the law. Once such an intention is ascertained, the statute should receive a purposeful or functional interpretation.
12. xxx xxx xxx.....*

13. While interpreting a statute, the problem or mischief that the statute was designed to remedy should first be identified and then a construction that suppresses the problem and advances the remedy should be adopted. It is settled law that exemption clauses in beneficial or social welfare legislations should be given strict construction It was observed in Shivram A.Shiroor v. Radhabai Shantram Kowshik [(1984) 1 SCC 588] that the exclusionary provisions in a beneficial legislation should be construed strictly so as to give a wide amplitude to the principal object of the legislation and to prevent its evasion on deceptive grounds. Similarly, in Minister Administering the Crown Lands Act v. NSW Aboriginal Land Council, Kirby, J. held that the principle of providing purposive construction to beneficial legislations mandates that exceptions in such legislations should be construed narrowly.”



30. In the light of the above discussion, we can only approve the line of action of the Tribunal in granting relief to respondents 1 and 2 herein in accord with Section 47 of the PWD Act, 1995, but with a slight modification as indicated here below.

31. The Tribunal took stock of the date of death of Sri.P.C.James on 12.9.2019 to grant relief. However, we notice that the petitioner company had disbursed the gratuity due to Sri.P.C.James on 27.4.2018, by crediting the amount to the account of Sri.P.C.James. Although learned counsel for respondents 1 and 2 contended that they came to know about such credit of gratuity only in the year 2022, we are not inclined to accept the said contention, for, the factum of credit of the amount on 27.4.2018 in the account of Sri.P.C. James is not disputed. Disbursal of gratuity presupposes superannuation of the employee, wherefore, we are inclined to take the said date of 27.4.2018 – instead of the date of death of Sri.P.C.James on 12.9.2019 - to stipulate the period upto which respondents 1 and 2 are entitled to the salary arrears and other benefits due to Sri.P.C.James. But for the above modification, the impugned Ext.P6 order – which directs



payment of arrears of salary and other amounts due and payable to Sri.P.C.James, inclusive of gratuity and P.F. - is hereby confirmed. However, the period of one month stipulated for disbursal of the amounts due to respondents 1 and 2 in terms of Ext.P6 order shall be reckoned from the date of receipt of a copy of this judgment.

The original petition is disposed of accordingly.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C. JAYACHANDRAN, JUDGE

ww/skj

**APPENDIX OF OP (CAT) 72/2022**

PETITIONER ANNEXURES

Exhibit P1	TRUE COPY OF OA. NO. 326/2020 FILED BY THE RESPONDENTS 1&2 HEREIN / APPLICANTS IN THE OA BEFORE THE CAT, ERNAKULAM BENCH.
Annexure A1	TRUE COPY OF MEDICAL CERTIFICATE DATED 26.09.2007 ISSUED BY THE MEDICAL TRUST HOSPITAL
Annexure A2	TRUE COPY OF THE CERTIFICATE FOR THE PERSONS WITH DISABILITIES DATED 29.10.2010
Annexure A3	TRUE COPY OF THE DEATH CERTIFICATE DATED 18.9.2019
Annexure A4	TRUE COPY OF THE APPLICATION DATED 2.9.2008 FILED BEFORE THE COMMISSIONER FOR WORKMEN COMPENSATION
Annexure A5	TRUE COPY OF ORDER DATED 16.9.2009 IN W.C.C.NO. 74/2008 OF DEPUTY LABOUR COMMISSIONER
Annexure A6	TRUE COPY OF REPORT DATED 25.8.2012 SUBMITTED TO THE HUMAN RIGHTS COMMISSION BY THE HOCL
Annexure A7	TRUE COPY OF THE PETITION DATED 16.12.2014 SUBMITTED BEFORE THE 3RD RESPONDENT
Annexure A8	TRUE COPY OF THE COMMENTS FILED BY THE HOCL DATED 4.8.2015
Annexure A9	TRUE COPY OF THE ORDER DATED 30.3.2017 ISSUED BY THE COMMISSIONER FOR PERSONS WITH DISABILITIES
Annexure A10	TRUE COPY OF O.M.NO.36035/2009 ESTT. (RES) DATED 10.6.2009.
Annexure A11	TRUE COPY OF APPLICATION FOR GRATUITY FILED ON 31.5.2014
Annexure A12	TRUE COPY OF JUDGMENT DATED 23.01.2020 IN WP(C)NO.19549/2019 OF THE HIGH COURT OF KERALA



Exhibit P2 TRUE COPY OF REPLY STATEMENT DATED
5.2.2021 FILED BY THE PETITIONERS HEREIN
OA. NO. 326/2020

Annexure R1(a) TRUE COPY OF THE LETTER DATED 10.1.2008
ALONG WITH THE COPY OF THE CERTIFICATE
DATED 26.9.2007.

Exhibit P3 TRUE COPY OF THE REJOINDER FILED BY THE
FIRST RESPONDENT HEREIN DATED 13.9.2021

Exhibit P4 TRUE COPY OF THE ADDITIONAL REPLY
STATEMENT FILED ON BEHALF OF THE
PETITIONERS HEREIN DATED 19.5.2022 ALONG
WITH MISCELLANEOUS APPLICATION TO ACCEPT
ADDITIONAL REPLY STATEMENT

Exhibit P5 TRUE COPY OF THE MEMO FILED BY THE
COUNSEL FOR THE PETITIONERS HEREIN DATED
1.7.2022

Exhibit P6 TRUE COPY OF ORDER DATED 27.9.2022 OF THE
LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH IN OA NO. 326/2020