



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945

WP(C) NO. 36325 OF 2022

PETITIONER/S:

- 1 SHANKARA NARAYANAN P.A., AGED 68 YEARS
POOSSERY HOUSE, RAMAVARMAPURAM P.O., KUTTIMUKK,
TRISSUR- 680631.
- 2 MOHANAN K.K, KUNNEKATTUKARA (H), EAST POTTA, POTTA
P.O., TRISSUR- 680722.
- 3 THILAKAN P.S., POIKADAN (H), KUTTICHIRA P.O.,
KUNDUKUZHIPADAM, TRISSUR- 680724.
- 4 N.M. MANOHARAN, NAROTH PARAMBIL (H), AYYANTHOLE P.O.,
TRISSUR, 680724.
- 5 M.G. BABU, MAMBILLY (H), KAANDASSAN KADAVU,
KAARAKUKKU- 680613.
- 6 K.K. CHANDRAN, S/O KUNJAKKAN, KARAYIL (H), EDAMUTTAM
P.O., TRISSUR- 680568.
- 7 CHANDRAN P.V., PANAPARAMBIL (H), CHOOLUR P.O., VALAPAD
VIA, TRISSUR- 680567.
- 8 SURESH KUMAR A.B., ALAIKAL (H), CHOOLUR P.O., VALAPAD,
680567.
- 9 VENUGOPAL K.P., KOLANTHRA HOUSE, KAIPAMANGALAM,
TRISSUR, CHENDRAPINNI EAST, 680681.
- 10 R. SUDHAKARAN, S/O RAMAN, PUTHUSSERIL (H), THODUPUZHA
P.O., OLAMATTAM, IDUKKI-685584.
- 11 SASI P.K., S/O KARUNAKARAN, PARAKKAL (H), KOLANI P.O.,
THODUPUZHA, IDUKKI, 685608.
- 12 CHANDRA SALIM K., SREE KRISHNA BHAVAN, ELAPPARA P.O.
IDUKKI, 685501.
- 13 SATHEESAN C.M., S/O MADHAVAN, CHILANKA, MANAKKAD P.O.,
THODUPUZHA, IDUKKI- 685583.
- 14 FRANCIS K., FEBIN VILLA, TRINITY NAGAR, KARUMANOOR
PARASSALA P.O., 695502.



BY ADVS.
DEEPU THANKAN
UMMUL FIDA
LAKSHMI SREEDHAR
LEKSHMI P. NAIR
SHAHNAS K.P

RESPONDENT/S:

- 1 KERALA STATE BEVERAGES (M AND M) CORPORATION LTD.,
BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM
- 695 033.
- 2 MANAGING DIRECTOR, KERALA STATE BEVERAGES (M & M)
CORPORATION LTD.,
BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM
- 695 033.
- 3 KERALA ABKARI WORKERS WELFARE FUND BOARD,
THIRUVANANTHAPURAM - 695 001, REP. BY ITS CHIEF
WELFARE FUND INSPECTOR.

BY ADV NAVEEN T - R1 AND R2,
SHRI T KRISHNAMOORTHY - R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.03.2024, ALONG WITH WP(C).35649/2022 and, 37503/2022, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945

WP (C) NO. 35649 OF 2022

PETITIONER/S:

- 1 KALADHARAN K., AGED 60 YEARS
S/O. KRISHNAN KUTTY, KOZHUKKULLIPPADICHOORAKKODE
CHOOLANOOR P.O. PALAKKAD 678 574.
- 2 ARJUNAN C, S/O. CHELLAPPAN, VRINDAVAN NAGAR 198
KADAPPAKADA P.O. KOLLAM-691 008.
- 3 MADHUSOODANAN K., S/O. KUMARAN, THRIKKADAVOOR, KOLLAM
691 601.
- 4 UNNIKRISHNAN P., S/O. PARAMU, VILAYILVEEDU, MEENADU,
KOLLAM -691 572.
- 5 RAGHUNATH M.G., S/O. MADHAVAN PILLAI, INDIRAMANDIRAM,
KULANGARABHAGAM, CHAVARA, KOLLAM 691 583.
- 6 BABU. M., S/O. MADHAVAN MANUSSERIL HOUSE, ULAVAKKAD,
NOORANAD PO, ALAPPUZHA- 690 504.
- 7 RAJAN R., S/O. RAGHAVAN, REVATHY MANDIR, AICKADU,
KODUMAN P.O., PATHANAMTHITTA - 691 555.
- 8 SADASIVAN K., S/O. KESAVAN AKHILNIVAS, ADOOR P.O.,
AMMAKANDAKARA, PATHANAMTHITTA 691 523.
- 9 RATNAKARAN PILLAI K., S/O. KUNJAN PILLAI MADAPPALLY,
CHAVARA, KOLLAM- 691 585.
- 10 PRASANNA KUMAR C., S/O. CHELLAPPAN PILLAI AYYANEZHATHU,
THOTTINUVADAKKU CHAVARA P.O., KOLLAM 691 583.
- 11 SADASIVAN A.N., S/O. NARAYANAN ANJILIPARAMBU, VADAKKAL
P.O., ALAPPUZHA -688 003.
- 12 BALANPILLASATHEESHKUMAR, S/O. BALANPILLA, ROHINI,
MANAKKAD NAGAR, 95 D, VADAKKEVILA, KOLLAM 691 010.
- 13 RAVIKUMAR S., S/O. SANKARAN K. GOWRISANKARAM,
MALAMELBHAGAM KAREEKULANGARA. P.O., KAYAMKULAM
ALAPPUZHA- 690 572.



- 14 BALAKRISHNAN N., S/O. NANU, BEERA BHAVANAM, KADAMPANADU PATHANAMTHITTA 691 552.
- 15 THAMPI. C., S/O. CHINNA PANICKER, ELIPPAKULAM P.O., VALLIKKUNNAM, ALAPPUZHA - 690 503.
- 16 SARASAN.S., S/O. SUKUMARAN PERUMPRALVADAKKATHIL, PADANILAM P.O., NOORANAD, ALAPPUZHA 690 529.
- 17 N.K. VIJAYAN, S/O. KUNJAPPAPANICKER NAMBIYARKULANGARA KIZHAKKETHIL NADUVILEMURI, NOORANAD, ALAPPUZHA- 690529.
- 18 RAJAN G., S/O. GOVINDAN, ASHARETHEKIZHAKETHIL PEROORKARAZHAMA, THAMARAKULAM ALAPPUZHA- 690 505.
- 19 RAJENDRAN O., S/O. UMMINI, MANASSERIL, ERUVA P.O., ALAPPUZA -690 572.
- 20 SASIKUMAR A.S., S/O. SREEDHARAN NAIR, INCHOR, AMBALAMPADY, VARAPETTY VILLAGE, KOTHAMANGALAM ERNAKULAM- 686 691.
- 21 NJALOR JOSEPH FRANCIS, S/O. JOSEPH, NJALOR HOUSE, KANJIRAKKAD RAYONPURAM P.O., PERUMBAVOOR , ERNAKULAM - 683 543.
- 22 SURENDRAN P.K., S/O. KUMARAN, PUTHENKUDY, MANACKAPPADY, PIRAROOR, MATHOOR, ERNAKULAM 683 574.
- 23 RADHAKRISHNAN NAIR.J., S/O. JANARDHANAN PILLAI, KADAKAVOOR P.O., CHIRAYINKEEZHU THIRUVANANTHAPURAM 695 306.
- 24 N. KRISHNAN NAIR, S/O. E. NEELAKANTAN PILLAI, GOKULAM, PANIMOOLA, ANDOORKONAM P.O., THIRUVANANTHAPURAM - 695 584.
- 25 RAVEENDRAN K., C/O. SATHYABHAMA C. CHULLIMADA, ERIMAYUR, PALAKKAD- 678 546.
- 26 MANIYAN S., S/O. SUKUMARAN. MANIVILASAM, VALIYAELA THOTTAVARAM, CHIRAYINKEEZHU THIRUVANANTHAPURAM- 695 304.
- 27 RAVEENDRAN NAIR. M, S/O. MADHAVAN PILLAI SAROJINIMANDIRAM, NETHAJI LANE, KAZHAKOOTTAM PO, THIRUVANANTHAPURAM - 695 582.
- 28 VIDHYADHARAN R., S/O. RAMAN, KRISHNAPRIYA, KODUVAYUR. PO PALAKKAD- 678 501.
- 29 K.KANNAN, S/O. KOTHANDAN, KURUTHIKODE HOUSE, THARUR, PALAKKAD -678 544.



- 30 MOHANAN K.M., KUNDIL HOUSE, KIZHAKKETHARA, KUTHANNUR,
PALAKKAD- 678 721.
- 31 CHANDRAN, S/O. KARTHU, SRUTHINIVAS, CHATHAMANGALAM,
NENMARA, PALAKKAD -678 508.
- 32 SREENIVASAN T.K., S/O. KRISHNAN THOTTUPURATH HOUSE,
BANK ROAD, AYALUR, ALATHUR, PALAKKAD 678 541.
- 33 MADHUSUDHANAN P.K., S/O. KUTTAN THAVALAKKULAM, MLA
ROAD, NENMARA, CHITTOOR, 678 508.
- 34 UNNIKRISHNAN L., S/O. LAKSHMANAN MOOTHATTUPARAMBU,
KUZHALMANNAM PO, PALAKKAD -678 702.
- 35 BABY THOMAS, S/O. THOMAS., KOCHUZHATHIL, THIRUVAZHIYAD
PO THIRUVILAD, PALAKKAD- 678 510.
- 36 JOY MATHEW, S/O. MATHEW, NEDUMPALAKUNNEL, SWTS ROAD,
ALUVA, ERNAKULAM -683 101.
- 37 SUKUMARAN.P., S/O. PADMANABHAN CHENGAZHAVELIL,
THAZHEKKARA P.O., MAVELIKKARA, ALAPPUZHA 690 102.
- 38 GOPALAKRISHNAN P., S/O. PADMANABHAN SUDHEESH BHAVAN,
THAZHAKKARA.P.O., MAVELIKKARA, ALZPPUZHA 690 102
- 39 K.SASIDHARAN, S/O. U JANAKI THEERAM, ASRAMAM P.O.,
KOLLAM 691 002.
- 40 VENUGOPAL P.G., S/O. GANGADHARAN PUZHAKKAREDATH,
MUTTINAKAM, VARAPUZHA PO, ERNAKULAM -683 517.
- 41 VENU T., S/O. AMMUNNI, PULICKAL PADATHU HOUSE,
UDAYAMPERUR PO., ERNAKULAM 682 307.
- 42 PRADEEP KUMAR,, S/O. CHANDRASHEKHARAN,
EZHUTHASSANPARAMBIL, ANTHIKKAD, THRISSUR 680 641.
- 43 VIJAYAN T., S/O. THANKAPPAN KATTAPPULLIL HOUSE,
AVALUKUNNU PO., ALAPPUZHA 688 006.
- 44 RAJU K.P., S/O. DAMODARAN, KAITHAPPARAMBIL HOUSE,
MAVELIPURAM KATTOOR P.O. 688 546.
- 45 SIVADASAN E.G., S/O. GOPALAN. IDAMURIYIL HOUSE,
KANJIKUZHI, ALAPPYZHA- 688 523.
- 46 AMBIKESAN P., S/O. PARAMU., BLOCK 18, ALAPPUZHA
MUNICIPALITY, ALAPPUZHA 688 013.
- 47 JOHNY JOSEPH, S/O. JOSEPH 125 METHARU, AVALUKUNNU
P.O., ALAPPUZHA -688 006.



- 48 VIJAYAKUMAR C.V., S/O. VELAYUDHAN, CHERUPUNNAYIL, SL
PURAM P.O., SITHALAKSHMIPURAM, ALAPPUZHA- 688 523.
- 49 VINOD KUMAR C.G, CHAKINGALTHODI, VADANAMKURISHI,
PATTAMBI, PALAKKAD -679 121.
- 50 M.E. MATHAI, S/O. LOVELY MATHEW, MAPPANIKKATTU,
ADIMALY, CAMPCO JUNCTION, MANNAMKANDAM, IDUKKI -685
561.
- 51 SUSY JOSE, W/O. JOSE V.J., VADAKKUMCHIRAYIL, NEAR
NIRMALA SADAN, MUVATTUPUZHA VILLAGE, MARADY PART,
ERNAKULAM 686 661.
- 52 P.C.SOMAN, PANOLI HOUSE, EDAMUTTAM PO. VALAPPAD,
THRISSUR.
- 53 SATHEY E.P., W/O. LATE P. SANAL PRASAD EDAKKATTIL
HOUSE, NETTOOR, MARADU ERNAKULAM-682 040.
- 54 PONNU. C, S/O. CHAMI, VAKKAVU, NEMMARA, PALAKKAD- 678
508.
- 55 PRASANNA.P., RAMANILAYAM, PALAYAPETTA, PALAKKAD -678
001.
- 56 KALPAKAVALLY K.P., W/O. KALADHARAN, 409, MEZHUKILVEEDU,
CHITRA JUNCTION, AKATHETHARA, PALAKKAD 678 008.
- 57 K.K. SASIKUMAR, S/O. K. KARUNAKARAN, KARUNALAYAM,
ERUMAKKUZHY, NOORANAD P.O., MAVELIKKARA, ALAPPUZHA-
690 504.
- 58 VASANTHAKUMARAN NAIR, USHAS, T.P.NAGAR, VENPAKAL PO.,
NEYATTINKARA, THIRUVANANTHAPURAM- 695 123.
- 59 SHAJI K., S/O. KUMARAN M.K. CHENNAMMAVINAL, ADIMURIYIL,
ELAVUMTHITTA P.O. PATHANAMTHITTA 689 625.
- 60 T.K. SURENDRAN, S/O KESAVAN THOTTUPURATH, KALIYAR
P.O., VANNAPURAM, THODUPUZHA, IDUKKI- 685607.
- 61 JOSE THOMAS, S/O THOMAS KAROTTUTHAZHATH, PANNIMATTOM
P.O. VELLIYAMATTOM, IDUKKI-685588.
- 62 GHOSH K.K., S/O KRISHNAN K.P., KOICKAL HOUSE,
KANJIRAMATTOM, THODUPUZHA EAST P.O., IDUKKI 685585.
- 63 GEORGE PAUL, S/O PAILY, CHAVITTANIYIL, THEKKUMBHAGAM
P.O. THODUPUZHA, IDUKKI-685585.
- 64 XAVIOUR K. LUIES, S/O K.X. LUIES, KOLLAMPARAMBIL,
KUMARAMANGALAM, IDUKKI- 685608.



65 SAMRAJ C.G., S/O GEORGE, VIJAYALAYAM, ARAKUNNU,
NEYYANTINKARA, ARUVIPPURAM P.O. PERUMKADAVILA,
TIRUVANANTHAPURAM, -695126 .

BY ADVS.
DEEPU THANKAN
UMMUL FIDA
LAKSHMI SREEDHAR
LEKSHMI P. NAIR
SHAHNAS K.P

RESPONDENT/S:

- 1 KERALA STATE BEVERAGES (M AND M) CORPORATION,
BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM
- 695 033.
- 2 MANAGING DIRECTOR, KERALA STATE BEVERAGES (M & M)
CORPORATION LTD. ,
BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM
- 695 033.
- 3 KERALA ABKARI WORKERS WELFARE FUND BOARD,
THIRUVANANTHAPURAM - 695 001, REP. BY ITS CHIEF
WELFARE FUND INSPECTOR.

BY ADV NAVEEN T - R1 AND R2,
SHRI T KRISHNAMOORTHY - R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
13.03.2024, ALONG WITH WP(C).36325/2022 AND CONNECTED CASES, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE BASANT BALAJI

WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945WP (C) NO. 37503 OF 2022PETITIONER/S:

- 1 MANOHARAN D, AGED 68 YEARS, S/O. DAMODHARAN M.S. MANU BHAVAN, THODUPUZHA PO, IDUKKI 685 584.
- 2 MOHANAN K.K., AGED 63 YEARS, S/O KRISHNAN, PALLIPURATH, KANJIRAMATTAM, THODUPUZHA, IDUKKI 685 585.
- 3 K.K. SIVAN, AGED 70 YEARS, S/O KUMARAN, AYYAPPASADANAM, THEKKUMBHAGAM P.O. THODUPUZHA, IDUKKI 685 585
- 4 MOHANAN K.K., AGED 68 YEARS, S/O KRISHNAN K, KARINKATTIL MOHANAM, ANGADICKAL SOUTH P.O., CHENGANNOOR - 689 122
- 5 BABY JOSEPH, AGED 70 YEARS, S/O K S JOSEPH, KUZHIVELIL (H) KALLIMALI, MAMMATTIKANAM, IDUKKI 685 566.

BY ADVS.DEEPUPH THANKAN, LAKSHMI SREEDHAR, UMMUL FIDA
LEKSHMI P. NAIR

RESPONDENT/S:

- 1 KERALA STATE BEVERAGES (MANUFACTURING AND MARKETING) CORPORATION, BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM - 695 033.
- 2 MANAGING DIRECTOR, KERALA STATE BEVERAGES (M & M) CORPORATION LTD., BEVCO TOWER, VIKASBHAVAN, PALAYAM, THIRUVANANTHAPURAM - 695 033
- 3 KERALA ABKARI WORKERS WELFARE FUND BOARD THIRUVANANTHAPURAM - 696 001, REPRESENTED BY ITS CHIEF WELFARE FUND INSPECTOR.

BY ADV NAVEEN T - R1 & R2,
SHRI KRISHNAMOORTHY - FOR R3

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13.03.2024, ALONG WITH WP(C)36325/2022 AND CONNECTED CASE, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**‘C.R.’****JUDGMENT**

(Dated this the 13th day of March 2024)
[WP(C) Nos.36325/2022, 35649/2022 and 37503/2022]

In these Writ Petitions, a common question arises for consideration, and therefore, they are heard together, and a common judgment is passed. The question to be decided is whether the the Abkari workers working in the 1st respondent corporation are entitled to gratuity under the Payment of Gratuity Act, 1972, when they are paid gratuity and provident fund under the Kerala Abkari Workers Welfare Fund Act, 1989 (for short ‘the KAWWF Act’).

2. For a proper understanding, W.P.(C) No.36325 of 2022 is taken as a leading case, and the facts in brief are extracted below:

The petitioners are retired Abkari workers of the 1st respondent Corporation. The petitioners were inducted to be workers of the corporation as early as in 2001. The service of



the employees of the corporation, including the Abkari workers, are governed by the Service Rules for the Employees of the Kerala State Beverages (M&M) Corporation Ltd (for short, ‘the Service Rules’). Chapter V of the Service Rules deals with the Provident Fund, gratuity and medical benefits.

3. As per Rule 76 of the Service Rules, all the employees of the corporation are entitled to get gratuity at the time of termination of employment.

4. As per the KAWWF Act, on superannuation, the employees are entitled to gratuity and pension from the contribution fund. As per section 4 of the Act, employers and employees are liable to pay an equal amount of the contribution fund, and it shall be paid back as provident fund, gratuity, and family pension on superannuation.

5. When the petitioners retired from service, they were paid lumpsum amount as provident fund and gratuity under the KAWWF Act from 2009 and EPF amount from 2001 to 2009,



based on the contributions made. As per Rule 76 of Chapter v of the service rules, the petitioners are entitled to gratuity as in the case of other regular employees. The Government has not exempted the corporation by invoking section 5 of the Payment of Gratuity Act, 1972 (for short, 'the Gratuity Act'). Therefore, it is a duty cast upon them to pay the gratuity under Rule 76 to the petitioners. The payment of gratuity is a statutory obligation and need not be on an application. Section 7(2) of the Gratuity Act casts a duty on the employer to pay the gratuity immediately after the superannuation of the employee.

6. A counter affidavit is filed in W.P.(C) No.37503 of 2022, and it is adopted in all the cases. The main contention raised is that the petitioners are retired Abkari workers, and they were absorbed into the service of the corporation in view of the policy decision taken by the Government. The Service Rules of the Corporation came into force on 7.1.1986. There is no sanctioned post, by the name of Abkari worker, in the



Corporation. The regular employees of the Corporation are working under sanctioned posts and are covered under the Gratuity Act as provided under Rule 76 of the Service Rules. The KAWWF Act has been enacted to provide social security to the Abkari workers. As per Section 3 of the KAWWF Act, the fund has to be utilised to pay gratuity, pension, provident fund, family pension etc. As per the Kerala Abkari Workers' Welfare Fund Scheme, 1990 (for short, 'the Scheme'), an eligible employee is entitled to gratuity benefits under clause 36 of the Scheme. The petitioners are members of the Abkari Workers Welfare Fund. The corporation is bound to remit amount collected towards the contribution from the workers as well as contribution of the employer to the Welfare Fund Board.

7. A settlement was arrived between corporation and various unions representing the Abkari workers on 28.10.2002. As per the settlement, it was agreed that the



corporation shall make statutory contributions to get the provident fund and gratuity to the members. The Abkari workers can continue up to the age of 60 when the regular employees have to retire at the age of 58 years. The gratuity of the Abkari workers, who are members of the Board, is enhanced from 5% to 7% as per notification dated 6.1.2023, and employees' contribution was enhanced from 10% to 11.5%, and the employer's contribution was enhanced to 5% to 17% as per Ext.R1(c) notification. The provisions of the Gratuity Act are not applicable to the members working in the corporation. Their gratuity and allied benefits are governed by the provisions contained in the KAWWF Act. Being members of the Board, they are entitled to continue their service upto 60 years. The corporation has a duty to enroll all the Abkari workers in the Board, in view of the judgment of apex court in Special Leave Appeal (Civil) No.10923 of 2009 and connected cases.



8. The counsel for the petitioners relied on judgments in **Allahabad Bank v. All India Allahabad Bank Retired Emps. Assn. [2010 (1) SCC L&S) 561]**, **Manoj K.R v. Kerala State Beverages Corporation [2006 KHC 1474]** and **Kerala State Co-operative Bank Ltd., Thiruvananthapuram v. Court of Deputy Labour [2021 (1) KHC 239]**. All these decisions deal with the payment of gratuity to employees who are not getting gratuity under any other Act. The dictum laid down only directs that the employer must disburse gratuity as it is a statutory obligation. When the Abkari workers are paid gratuity out of the Welfare Fund under the KAWWF Act, they will not come under the definition of ‘employees’ under the Gratuity Act. Therefore, the decisions are not applicable to the facts of these cases.

9. Heard Shri.Deepu Thankan for the petitioners, the standing counsel, Sri T Naveen for respondents Nos.1 and 2, Kerala State Beverages Corporation Ltd, and standing counsel,



Shri S Krishnamoorthy for the 3rd respondent, Kerala Abkari Workers Welfare Fund Board.

10. Section 2(e) of the Gratuity Act defines an employee as:

“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 the 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.”

Section 3 of the Kerala Abkari Workers’ Welfare Fund Act, 1989 defines **Abkari Workers’ Welfare Fund**. Sub-section 2 stipulates that the amounts shall be credited to the Fund. Sub-section 4 directs how the fund can be utilized. Sub-section (4)(c) deals with payment of gratuity. So, the amount in the Welfare Fund is to be used to pay gratuity to any Abkari



worker. Section 4 of the Act deals with Contributions to the Fund. Clause (1) of Section 4 reads as follows:

“4. **Contribution to the fund.**- (1) The contribution which shall be paid by employer to the Fund shall be ten per cent of the wages for the time being payable to each of the abkari worker and the abkari workers contribution shall be equal to the contribution payable by the employer in respect of him in the manner specified in the scheme.”

(2) The employer shall, in addition to the contribution payable under sub- section (1) contribute to the Fund as gratuity an amount equal to five per cent of the wages for the time being payable to each of the abkari worker;

From Section 4(2) of the Act, it can be seen that in addition to the contribution payable as (1), the amount equal to 5% of the wages is to be contributed by the employer towards the Fund as gratuity. For the implementation of Section 3 of the Act, a scheme named Kerala Abkari Workers' Welfare Fund Scheme, 1990 is brought into force. Clause 24 of the scheme prescribes that a worker who works continuously for 3 months is eligible to be enrolled as a member of the scheme. Clause



36 of Chapter 8 of the scheme deals with how the gratuity has to be calculated, and clause 37 deals with when the payment has to be made. So, a separate procedure is prescribed under clauses Nos.36 and 37 of Chapter 8 of the scheme for payment of gratuity. The gratuity is paid out of the Fund made by the contribution of the Abkari workers and the employer more specifically under clause 4(2) of the KAWWF Act.

11. A reading of the definition of the word ‘employee’ under the Payment of Gratuity Act would make it clear that a person who is governed by any other Act or Rules for providing payment of gratuity, the said person will not come under the definition of employee under the payment of Gratuity Act.

12. It is not in dispute that the petitioners have received an amount of gratuity and provident funds from the Scheme. Therefore, they are not entitled to claim gratuity under the Gratuity Act as they do not come under the definition of



‘employee’ under the Gratuity Act. The regular employee working in the sanctioned posts of the Corporation alone will come under the definition of the employees under the Gratuity Act, and they are only entitled to claim gratuity under 76 of the Service Rules for the employees of Kerala State Beverages Corporation Ltd. The Abkari workers and the Corporation regular employees are considered in two different classes.

13. A question arose before this court as to whether the regular employees of the Corporation can be equated with the Abkari workers regarding the age of retirement, as the age of retirement of the Abkari workers was 60, whereas that of the regular employees was 58. A Division Bench of this court in **Managing Director, Kerala State Beverages Corporation v. P.B. Gopi [2015 SCC online Ker. 39679]**, after elaborate consideration of the issue, held that according to clauses 35 and 2(m) of the Scheme, the Abkari workers are entitled to continue till the age of 60 years as they continue to govern by statutory



Scheme as per the government orders issued as well as the settlement entered into between the Corporation and the unions. It was also held that the classification between the regular employees of the corporation and the Abkari workers in so far as the age of retirement is concerned, it is a valid classification which has a rationale nexus with the objects sought to be achieved. Therefore, the Abkari workers, like the petitioners, form a different class and cannot be equated with the regular employees of the corporation who are working in the sanctioned posts. Only the regular employees of the Corporation are bound by Rule 76 of the Service Rules and thereby claim gratuity under the Gratuity Act. As far as the Abkari workers are concerned, the KAWWF Act and the Scheme provide for payment of gratuity to them based on the employer's contribution and the employee under Sections 4(1) and (2) of the Act. Moreover, as per Ext.R1(b), a bilateral agreement was entered into between the corporation and



various trade unions. As per clause iii(b) of the terms of the Settlement, it was agreed that benefits like Provident Fund, gratuity, etc., will be covered under the Kerala Abkari Workers Welfare Fund Board, and the board shall be making the statutory contribution along with the contribution of the worker to the Board. Therefore, it is held that the petitioners can only claim gratuity under the Abkari Workers Welfare Fund Act and the Scheme and not under the Gratuity Act. The petitioners claim that they are entitled to gratuity under the Gratuity Act also, in addition to the amounts disbursed as gratuity under the KAWWF Act, is only to be rejected.

14. Another contention raised is that since the amount paid as a gratuity from Abkari Workers Welfare Fund is based on the contribution made by the employee, it cannot be termed as gratuity, and it is just like an amount of provident fund. As far as the gratuity under the Gratuity Act is concerned, it is the statutory liability of the employer to pay gratuity to all the



employees on termination of his employment either on superannuation on retirement on resignation or death or disabled due to accident or disease unless the establishment is exempted under the section 5 of the Act. As discussed earlier, when the Abkari workers form a separate class of workers, and the regular employees are separate ones, the Abkari workers who are getting gratuity from the Welfare Fund cannot claim gratuity under the Gratuity Act, over and above the amounts received under the KAWWF Act.

15. If the argument of the petitioners is accepted, it will amount to double payment of gratuity, one under the Welfare Fund and the other under the Gratuity Act, which will be unlawful enrichment. Therefore, these Writ Petitions fail and are dismissed.

**Sd/- BASANT BALAJI,
JUDGE**



APPENDIX OF WP(C) 35649/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CHART SHOWING THE DETAILS OF THE EMPLOYMENT OF THE PETITIONERS PREPARED FOR THE PURPOSE OF THIS CASE.
- Exhibit P2 TRUE COPY OF THE LETTER ISSUED TO THE FIRST PETITIONER BY THE FIRST RESPONDENT CORPORATION AT THE TIME OF HIS RETIREMENT DATED 13/04/2022.
- Exhibit P3 TRUE COPY OF THE LETTER ISSUED BY THE THIRD RESPONDENT I TO PETITIONER NO. 63 DATED 02/12/2019.

APPENDIX OF WP(C) 37503/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE CHART SHOWING THE DETAILS OF THE EMPLOYMENT OF THE PETITIONERS PREPARED FOR THE PURPOSE OF THIS CASE.
- Exhibit P2 TRUE COPY OF THE OFFICE MEMO ISSUED TO THE FIRST PETITIONER BY THE FIRST RESPONDENT CORPORATION AT THE TIME OF HIS RETIREMENT DATED 04/10/2014.

RESPONDENT EXHIBITS

- Ext.R1(a) True copy of the Order, G.O.(MS) No. 13/2002/TD dated 18-2-2022 issued by the Government.
- Ext.R1(b) True copy of the Settlement dated 28-10-2002 arrived at between the Beverages Corporation and various Unions representing the abkari workers.
- Ext.R1(c) True copy of the Notification No. 18/Leg.C2/2022/Law dated 6-1-2023 issued by the Government.
- Ext.R1(d) True copy of the Judgment dated 29-1-2009 in Writ Appeal No. 2473/2008 and connected cases of this Honourable Court.
- Ext.R1(e) True copy of the Order of the Honourable Supreme Court in Special Leave to Appeal (Civil) No. 10923/2009 and connected cases dated 27-7-2009.
- Ext.R1(f) True copy of the Order, G.O.(MS) No. 13/2021/TD dated 12-2-2021 along with the staff pattern (Annexure-I) issued by the Government.



APPENDIX OF WP(C) 36325/2022

PETITIONER EXHIBITS

Exhibit P1 TRUE COPY OF THE CHART SHOWING THE DETAILS OF THE EMPLOYMENT OF THE PETITIONERS PREPARED FOR THE PURPOSE OF THIS CASE.

Exhibit P2 TRUE COPY OF THE OFFICE MEMO ISSUED TO THE ELEVENTH PETITIONER BY THE FIRST RESPONDENT CORPORATION AT THE TIME OF HIS RETIREMENT DATED 09/02/2016.