



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

MONDAY, THE 21ST DAY OF JULY 2025 / 30TH ASHADHA, 1947

WP(C) NO. 24720 OF 2025

PETITIONER/S:

- 1 THANKAMMA,
 AGED 75 YEARS
 W/O JOSE SAMUEL, JOSEPH BHAVANAM, ANAYADI P.O,
 SOORANAD NORTH, KUNNATHOOR, KOLLAM DISTRICT, PIN
 - 690561
- 2 JOHNSON JOSE,
 AGED 51 YEARS
 S/O JOSE SAMUEL, RESIDING AT JOSEPH BHAVANAM,
 ANAYADI P.O,SOORANAD NORTH, KUNNATHOOR, KOLLAM
 DISTRICT, PIN - 690561
- 3 JOJU JOSE,
 AGED 49 YEARS
 S/O JOSE SAMUEL, RESIDING AT JOSEPH BHAVANAM,
 ANAYADI P.O, SOORANAD NORTH, KUNNATHOOR, KOLLAM
 DISTRICT, PIN - 690561
- 4 JACKSON JOSE,
 AGED 47 YEARS
 S/O JOSE SAMUEL, RESIDING AT JOSEPH BHAVANAM,
 ANAYADI P.O,SOORANAD NORTH, KUNNATHOOR,KOLLAM
 DISTRICT, PIN - 690561



2025:KER:56723

BY ADV SRI.H.VISHNUDAS

RESPONDENT/S:

- 1 THE REGIONAL JOINT LABOUR COMMISSIONER,
OFFICE OF THE REGIONAL JOINT LABOUR
COMMISSIONER, KOLLAM, PIN - 691013
- 2 THE DEPUTY LABOUR COMMISSIONER
OFFICE OF THE DEPUTY LABOUR COMMISSIONER,
KOLLAM, PIN - 691013
- 3 ADDL.R3. SMT. KRISHNAPRIYA S,
SUREH BHAVANAM, ANAYADI P.O., SOORANADU NORTH,
KUNNATHOOR, KOLLAM (IS SUO SOTU IMPEADED AS
ADDITIONAL RESPONDENT NO. 3 IN WPC 24720/2025 AS
PER ORDER DATED 04-07-2025 IN WPC 24720/2025)

R1 AND R2 BY SRI VK SUNIL,SR GP
R3 BY ADV SRI.K.M.FIROZ

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 21.07.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



“C.R.”

K.BABU, J.

WP(C).No.24720 of 2025

Dated this the 21st day of July, 2025

JUDGMENT

The petitioners are the legal representatives of one Samuel Jose @ Jose Samuel, the licensee of Thankam Cashew Factory, Anayadi, Kunnathoor, Kollam who died on 22.02.2022. Additional respondent No.3 was a worker in the Thankam Cashew Factory, an establishment comes under the definition of 'factory' under Section 2(g) of the Payment of Gratuity Act, 1972 ('the Gratuity Act' for short). The worker superannuated on 30.10.2021. She filed an application before the employer under Section 7(1) of the Gratuity Act seeking payment of gratuity entitled to her. The employer refused to entertain the



claim. Thereafter, she filed GC No.361/2022 under Section 7(4) of the Gratuity Act before the Controlling Authority. The 'respondent' in the application filed before the Controlling Authority was the Managing Director of Thankam Cashew Factory. Notice was issued to the respondent in the proceedings, which was received by one Sri. Anil Xavier, who was the then manager of the factory on 08.02.2023 (Ext.R3(a)). When the respondent in GC No.361 of 2022/the manager of the factory failed to appear before the Controlling Authority, Ext.P1 order was passed on 04.10.2023 directing payment of a sum of Rs.44,438/- to the petitioner as gratuity with interest at the rate of 10% per annum. Revenue recovery proceedings were initiated against the factory. Thereafter, the petitioners filed Ext.P2 application to set aside the *ex parte* order before the Controlling Authority.



It is submitted that the Authority did not consider that application. After that, the petitioners filed Ext.P4 appeal before the Appellate Authority along with an application to condone the delay of 472 days in filing the appeal. The Appellate Authority did not number the appeal. The petitioners also deposited the entire amount due to additional respondent No.3 as per Ext.P1 order, before the Controlling Authority. The petitioners seek a writ of mandamus directing respondent No.1 (the Appellate Authority) to number and admit the memorandum of appeal (Ext.P4).

2. I have heard the learned counsel for the petitioners, the learned Senior Government Pleader and the learned counsel for additional respondent No.3.

3. The learned counsel for the petitioners raised the following grounds:-



(1) Ext.P1 order is an order against a dead person.

(2) The Appellate Authority ought to have admitted the appeal and considered the application to condone the delay.

4. The learned counsel for the petitioners submitted that the factory in question was owned by Sri.Jose Samuel and since the order was passed on 04.10.2023, at a time when he was not alive, Ext.P1 is a nullity. Relying on **Ashok Transport Agency v. Awadhesh Kumar and another** [(1998) 5 SCC 567], the learned counsel for the petitioners submitted that as the factory is a proprietary concern, with the death of the owner, the proceeding seeking gratuity can only be initiated against his legal representatives.



5. The learned counsel for the petitioners submitted that the Appellate Authority was statutorily bound to number the appeal and consider the application seeking condonation of delay in preferring the appeal as per Section 7(7) of the Gratuity Act.

6. The learned counsel for additional respondent No.3 submitted that the concepts of owner, occupier, manager etc. in the context of Factories Act and Gratuity Act are to be understood distinctly. Relying on Section 2(f) of the Gratuity Act, the learned counsel submitted that the Manager/Managing Director is to be treated as 'employer' for the purpose of the Payment of Gratuity Act.

7. The learned counsel has taken me to the various provisions in the Factories Act and the Gratuity Act to substantiate his contention that the proceeding against the 'manager' in an application under Section



7(4) of the Gratuity Act is to be treated as a proceeding against the 'employer' as defined in the Act.

8. Section 2(f) of the Gratuity Act defines 'employer' as follows:-

“(f) "employer" means, in relation to any establishment, factory, mine, oilfield, plantation, port, railway company or shop -

(i) belonging to, or under the control of, the Central Government or a State Government, a person or authority appointed by the appropriate Government for the supervision and control of employees, or where no person or authority has been so appointed, the head of the Ministry or the Department concerned,

(ii) belonging to, or under the control of, any local authority, the person appointed by such authority for the supervision and control of employees or where no person has been so appointed, the chief executive officer of the local authority,

(iii) in any other case, the person, who, or the authority which, has the ultimate control over the affairs of the establishment, factory, mine, oilfield, plantation, port, railway company or shop, and where the said affairs are entrusted to any other person, whether called a manager, managing director or by any other name, such person; “

9. Section 2(g) of the Gratuity Act says that 'factory' has the meaning assigned to it in clause (m) of Section 2 of the Factories Act, 1948. Ext.P9 licence



issued in respect of the factory makes it clear that the factory under consideration is the one registered under the provisions of the Factories Act. Section 2(m) of the Factories Act defines 'factory'. Relying on the definition of 'occupier' in Section 2(n) of the Factories Act, the learned counsel for additional respondent No.3 submitted that the occupier of a 'factory' means a person who has ultimate control over the affairs of the factory. As per Section 7(1)(f) of the Factories Act, the name of the manager of the factory is to be communicated to the Chief Inspector of Factories. Section 7(4) of the Factories Act requires that whenever a new manager is appointed, the occupier shall send to the Inspector a written notice and to the Chief Inspector a copy thereof within seven days from the date on which such person takes over charge. Sub-section (5) of Section 7 says that during any



period for which no person has been designated as manager of a factory or during which the person designated does not manage the factory, any person found acting as manager, or if no such person is found, the occupier himself, shall be deemed to be the manager of the factory for the purposes of this Act. Rule 2(l) of the Kerala Factories Rules, 1957, defines 'Manager' as the person responsible to the occupier for the working of the factory for the purposes of the Act. Rule 12A of the Rules mandates notice of change of manager to the competent authority. Relying on the above referred statutory provisions, the learned counsel submitted that the manager in a factory is a statutorily recognized person to be treated as 'employer' as provided in Section 2(f) of the Gratuity Act.



10. Relying on Exts.P9 and P10, the learned counsel for the petitioners submitted that after the death of Jose Samuel, the licence of the factory was changed to the name of petitioner No.1, the wife of the deceased owner/occupier. The learned counsel for respondent No.3 brought to my notice that the licence for the same factory is continuing and the establishment as it existed at the time when respondent No.3 was working continues even after change of licence. The manager of the establishment admittedly received notice of the proceedings under the Gratuity Act. This is a constructive notice to the 'employer' as defined in the Gratuity Act. It is submitted that once the manager, the person in control of the affairs of the factory, is made a party in a proceeding, the death of the owner or occupier has no consequence and there is no need to implead the



legal representatives of the owner, especially in view of the fact that petitioner No.1 is continuing as the licensee. I am in perfect agreement with the argument raised by the learned counsel for respondent No.3. I hold that the 'employer' of Thankam Cashew Factory was properly represented in the proceedings before the Controlling Authority with the service of notice to the manager.

11. The learned counsel for the petitioners now submitted that the Appellate Authority was statutorily bound to number the appeal. In response to this contention, the learned counsel for respondent No.3 submitted that the Appellate Authority did not number the appeal as it was filed beyond the period of limitation. The learned counsel submitted that in view of the first proviso to sub-section (7) of Section 7 of the Gratuity Act,



the Appellate Authority has no power to admit an appeal beyond the period of 120 days (60+60).

12. Section 7 reads thus:-

“7. Determination of the amount of gratuity

xxxxx

(7)Any person aggrieved by an order under sub-section (4) may, within sixty days from the date of the receipt of the order, prefer an appeal to the appropriate Government or such other authority as may be specified by the appropriate Government in this behalf:

Provided that the appropriate Government or the appellate authority, as the case may be, may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the said period of sixty days, extend the said period by a further period of sixty days.

Provided further that no appeal by an employer shall be admitted unless at the time of preferring the appeal, the appellant either produces a certificate of the controlling authority to the effect that the appellant has deposited with him an amount equal to the amount of gratuity required to be deposited under



sub-section (4), or deposits with the appellate authority such amount.”

13. The learned counsel for respondent No.3 relied on ***Commanding Officer, Naval Base and Others v. Appellate Authority Under the Payment of Gratuity Act and others*** [2004 KHC 1073] and ***Secretary Sree Avittom Thirunal Hospital, Health Education v. State of Kerala*** [2023 KHC 9015] to substantiate his contentions. In ***Commanding Officer*** this Court held thus:-

“18.....The Payment of Gratuity Act had prescribed the period of limitation in filing an appeal as 60 days. The statute further conferred jurisdiction on the Appellate Authority to condone the delay of 60 days in preferring the appeal when sufficient cause was shown for the delay. The Limitation Act prescribes the time for filing suits, appeals and applications. S.5 of the Limitation Act empowers the court to condone the delay in filing applications and appeals when sufficient cause



has been shown to the satisfaction of the court. Such a power has been specifically given to the Appellate Authority under the Payment of Gratuity Act also to condone the delay of 60 days when sufficient cause is shown to the satisfaction of the Appellate Authority. When the Legislature has limited the jurisdiction of the Appellate Authority to condone the delay in filing an appeal only to a limited period of 60 days, the same authority cannot extend the time or condone the delay of any further period by invoking S.5 of the Limitation Act. The Payment of Gratuity Act is a subsequent legislation passed in 1972 whereas the Limitation Act was passed in 1963. The settled principle of interpretation of statutes is that when there are two mandates in two statutes, the provision in the later statute would prevail. When the period of limitation has been specifically prescribed in the subsequent statute viz. the Payment of Gratuity Act and the Appellate Authority has been given jurisdiction to condone the delay of a specified period on establishing sufficient cause, there is an implied prohibition from invoking the provisions under the Limitation Act for condoning the delay. There is an implied bar in invoking S.5 of the Limitation Act and as such I am in full agreement with the views taken by the High Court of Madras and Andhra Pradesh. The Appellate Authority



under the Payment of Gratuity Act cannot condone an application for condonation of delay beyond the period of 60 days as contemplated under S.7(7) of the Act.”

14. In ***Sree Avittom Thirunal Hospital***, reiterating the principle held in ***Commanding Officer***, this Court held that the legislature, while enacting subsection (7) of Section 7 of the Gratuity Act specifically excluded the application of Limitation Act by providing the limitation of appeal for a period of 60+60 days. This Court observed that for all the intends and purposes, there cannot be any condonation of delay by taking the aid of the aforementioned provisions by entertaining an application under Section 5 of the Limitation Act.

15. The learned counsel for respondent No.3 further submitted that the ratio in ***Ashok Transport Agency***, the decision relied on by the learned counsel for



the petitioners, is not applicable to the facts of the case. The provisions of Gratuity Act are self-contained and the provisions of CPC are applicable only to certain limited purpose of enquiry, as provided in Section 7(5) of the Payment of Gratuity Act.

16. In view of the statutory provisions mentioned above and the precedents relied on, this Court is of the view that the appeal preferred by the petitioners is beyond the period of limitation, and therefore, not maintainable. The Appellate Authority cannot be found fault with for not numbering the appeal.

17. At this juncture, the learned Government Pleader brought to my notice that the appeal was numbered by the Appellate Authority after the institution of the Writ Petition. The numbering of the appeal by the Appellate Authority has no consequences as the



petitioners themselves admitted that the appeal was not numbered at the time of institution of the Writ Petition.

18. The learned Senior Government Pleader submitted that the Controlling Authority after serving notice to both sides considered the pleadings in the application and recorded the finding that respondent No.3 is entitled to Rs.44,432/- with accrued interest as gratuity. The learned Government Pleader submitted that the Authority had considered all relevant aspects while passing the impugned order.

19. I have gone through Ext.P1 order. There is no patent error or irregularity in the order awarding gratuity.

20. Having regard to the finding that the employer has received notice regarding the proceedings and the Controlling Authority rightly considered relevant aspects



while passing the Award, this Court finds no reason to interfere with the Award exercising jurisdiction under Article 226 of the Constitution of India.

21. Therefore, the petitioners are not entitled to the reliefs sought for in the Writ Petition.

22. It is submitted that a sum of Rs.60,362/- was deposited before respondent No.2 at the time of filing appeal. The Appellate Authority shall release the amount to respondent No.3 forthwith.

23. Registry shall forward the copies of the judgment to the Controlling Authority and the Appellate Authority.

The Writ Petition stands dismissed.

Sd/-

**K.BABU,
JUDGE**

kkj



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APPENDIX OF WP(C) 24720/2025

PETITIONER EXHIBITS

- | | |
|------------|--|
| Exhibit P1 | A TRUE COPY OF THE ORDER DATED 4-10-2023 IN GC NO.361/2022 PASSED BY THE DEPUTY LABOUR COMMISSIONER, KOLLAM-2ND RESPONDENT |
| Exhibit P2 | A TRUE COPY OF THE UNNUMBERED IA TO SET ASIDE EX-PARTE ORDER FILED BY THE PETITIONERS DATED 16-10-2024 BEFORE THE DEPUTY LABOUR COMMISSIONER, KOLLAM -2ND RESPONDENT |
| Exhibit P3 | A TRUE COPY OF THE DEATH CERTIFICATE OF LATE. SRI. S.JOSE ISSUED BY THE LOCAL REGISTRAR OF BIRTH & DEATH DATED 14-02-2022 |
| Exhibit P4 | A TRUE COPY OF THE UNNUMBERED MEMORANDUM OF APPEAL DATED 19-05-2025 FILED BY THE PETITIONER'S UNDER SECTION 7(7) OF THE PAYMENT OF GRATUITY ACT AGAINST THE EX-PARTE ORDER BEFORE THE APPELLATE AUTHORITY-1ST RESPONDENT |
| Exhibit P5 | A TRUE COPY OF THE UNNUMBERED IA IN UNNUMBERED GA UNDER SECTION 7(7) PROVISIO OF THE PAYMENT OF GRATUITY ACT TO CONDONE THE DELAY ON FILING OF THE APPEAL DATED 19-05-2025 FILED BEFORE THE 2ND RESPONDENT |
| Exhibit P6 | A TRUE COPY OF THE UNNUMBERED IA TO STAY THE REVENUE RECOVERY PROCEEDINGS DATED 19-05-2025 FILED BEFORE THE 1ST RESPONDENT |
| Exhibit P7 | A TRUE COPY OF THE PETITION DATED 19-05-2025 FILED IN G.C NO.361/2022 BY |



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THE PETITIONERS BEFORE THE 2ND
RESPONDENT

Exhibit P8 A TRUE COPY OF THE RECEIPT DATED 21-
05-2025 ISSUED BY THE 2ND RESPONDENT
RESPONDENT EXHIBITS

Exhibit R3(A) TRUE COPY OF THE ACKNOWLEDGEMENT CARD
DATED 8.02.2023

Exhibit R3(B) TRUE COPY OF THE MEDICAL CERTIFICATE
DATED 08.07.2021

PETITIONER EXHIBITS

Exhibit P9 A TRUE COPY OF THE LICENSE BEARING
REGISTRATION NO.CHW/CHR/11/375/1996
DATED 9-11-2020 GRANTED TO JOSE
SAMUEL ISSUED BY THE DEPARTMENT OF
FACTORIES AND BOILERS

Exhibit P10 A TRUE COPY OF THE LICENSE GRANTED TO
SMT. THANKAMMA THOMAS BEARING
NO.CHW/CHR/11/375/1996 DATED NIL
ISSUED BY THE DEPARTMENT OF FACTORIES
AND BOILERS