

"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

WEDNESDAY, THE 3RD DAY OF DECEMBER 2025 / 12TH

AGRAHAYANA, 1947

WP(C) NO. 11384 OF 2025

PETITIONER/S:

THE MANAGING DIRECTOR, KERALA STATE FINANCIAL
ENTERPRISES LTD.
CORPORATE OFFICE, BHADRATHA, MUSEUM ROAD, P.B.
NO. 572, THRISSUR, REPRESENTED BY ITS LIAISON
OFFICER, [LEGAL] SUDARSANAN. T.V, PIN - 680020

BY ADVS.
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURRYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN
SRI.JAI MOHAN

RESPONDENT/S:

- 1 SRI. MATHEW P. BABU
PADINJARAE VEEDU, UPPALAM ROAD, T.C. 26/2692-1,
THIRUVANANDHAPURAM., PIN - 695001
- 2 THE APPELLATE AUTHORITY UNDER THE PAYMENT OF
GRATUITY ACT, 1972 (REGIONAL JOINT LABOUR
COMMISSIONER, KOLLAM)
COLLECTORATE, CIVIL LINES, KOLLAM., PIN - 691013

WP(C) 11384 of 2025

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ADV K M FIROZ ,AMICUS CURIAE
ADV C S SHEEJA SR GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 03.12.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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'C.R'

K.BABU, J.

WP (C).No.11384 of 2025

Dated this the 3rd day of December, 2025

JUDGMENT

The challenge in this Writ Petition is to the order dated 16.01.2024 passed by the Regional Joint Labour Commissioner, Kollam, the Appellate Authority constituted under the Payment of Gratuity Act, 1972, in I.A.No.10/2024 in GA No.42/2023 ('the Act' for short) whereby the petitioner-employer was directed to deposit the amount of gratuity determined by the Controlling Authority under sub-section (4) of Section 7 of the Act.

2. The question that arises for consideration is whether the phrase in the proviso to sub-section (7) of Section 7 of the Act — 'an amount equal to the amount of gratuity required to be deposited' — includes the entire



amount directed to be paid under sub-section 4(c) of Section 7 of the Act, as a condition precedent for admitting the appeal.

3. I have heard Smt. Pooja Menon, the learned counsel representing Sri. M. Gopikrishnan Nambiar, the learned counsel for the petitioner, Sri. Mathew P. Babu—respondent No.1 (party-in-person) and Sri. K.M. Firoz, the learned *Amicus Curiae*.

4. The learned counsel for the petitioner submitted that proviso to sub-section (7) of Section 7 of the Act mandates only the deposit of the 'gratuity amount' as a condition precedent for admitting the appeal. It is submitted that the Statute does not mandate that the interest accrued to the amount due to the employee as gratuity is required to be paid as pre-deposit. The learned counsel has taken me to the various sub-sections of Section 7 of the Act to substantiate her



contentions. The learned counsel relied on ***Standard Stonewares and Tiles v. Appellate Authority*** [2004 (2) KLT 519] to buttress her submissions. The learned Counsel made an attempt to distinguish the ratio of the decisions of this Court in ***BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana*** [WP(C) No.21488 of 2013], ***Managing Director, (COIRFED) v. Regional Labour Commissioner (Central)*** [2015 KHC 192] and ***Managing Director, Food Corporation of India v. Deputy Chief Labour Commissioner (Central)*** [MANU/KE/0224/2020] and submitted that the observation in those decisions by co-ordinate Benches of this Court that the amount required to be deposited under the proviso to sub-section (7) of Section 7 would be the amount adjudicated upon with interest thereon, is hit by the principle of *per incuriam*.



5. The learned *Amicus Curiae* has taken me to various statutory provisions. The learned *Amicus Curiae* brought to my notice the phrases, 'amount of gratuity', 'any amount', 'such amount', 'amount equal to the amount of gratuity' under various sub-sections in Section 7 and submitted that the legislature has consciously intended that the pre-deposit is an amount equal to the amount of gratuity, which does not include interest for the gratuity amount. The learned *Amicus Curiae* submitted that the observation in ***BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana, Managing Director, (COIRFED) v. Regional Labour Commissioner (Central) and Managing Director, Food Corporation of India v. Deputy Chief Labour Commissioner (Central)*** is to be held *per incuriam*.

6. The party respondent relied on ***BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana,***



Managing Director (COIRFED) v. Regional Labour Commissioner (Central), Managing Director, Food Corporation of India v. Deputy Chief Labour Commissioner (Central) in support of his contention that the pre-deposit contemplated under the proviso to sub-section (7) of Section 7 of the Act is the amount equal to the amount of gratuity required to be deposited under sub-section (4) which includes the gratuity amount and interest.

7. Smt. C.S. Sheeja, the learned Senior Government Pleader submitted that the language of the Statute indicates that the legislature intended the amount determined under sub-section 4(c) of Section 7 as pre-deposit.

8. The Payment of Gratuity Act, 1972, is an Act enabling a scheme for payment of Gratuity to employees. It not only creates a right to the payment of gratuity but



also, lays down the principles for its quantification thereof, and as also the conditions on which an employee may be denied gratuity. It is a complete code framed as a welfare legislation.

9. The relevant provision, is extracted hereunder:

7. Determination of the amount of gratuity

- (1) A person who is eligible for payment of gratuity under this Act or any person authorised, in writing to act on his behalf shall send a written application to the employer, within such time and in such form, as may be prescribed, for payment of such gratuity.
- (2) As soon as gratuity becomes payable, the employer shall, whether an application referred to in sub-section (1) has been made or not, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.
- (3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.
 - (3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the



period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

PROVIDED that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

(4)(a) If there is any dispute to the amount of gratuity payable to an employee under this Act or as to the admissibility of any claim of, or in relation to, an employee for payment of gratuity, or as to the person entitled to receive the gratuity, the employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

[***]

(b) Where there is a dispute with regard to any matter or matters specified in clause (a), the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.



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(c) The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the employer.

(d) The controlling authority shall pay the amount deposited, including the excess amount, if any, deposited by the employer, to the person entitled thereto.

(e) As soon as may be after a deposit is made under clause (a), the controlling authority shall pay the amount of the deposit--

(i) to the applicant where he is the employee; or

(ii) where the applicant is not the employee, to the nominee or, as the case may be, the guardian of such nominee or heir of the employee if the controlling authority is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.

(5) For the purpose of conducting an inquiry under sub-section (4), the controlling authority shall have



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the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

- (a) enforcing the attendance of any person or examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses.

(6) Any inquiry under this section shall be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code(45of1860).

(7) Any person aggrieved by an order under subsection (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



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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.

- (8) The appropriate Government or the appellate authority, as the case may be, may, after giving the parties to the appeal a reasonable opportunity of being heard, confirm, modify, or reverse the decision of the controlling authority.

[Emphasis supplied]

10. In order to address the rival contentions, it is profitable to consider various sub-sections in Section 7.

11. The heading of Section 7 is 'Determination of the amount of gratuity'. Sub-section (1) of Section 7 says that a person eligible for payment of gratuity shall send a written application to the employer for payment of such gratuity.



12. As per sub-section (2), the employer shall, whether an application mentioned above has been made or not, 'determine the amount of gratuity' and give notice in writing to the employee and also to the Controlling Authority, specifying the amount of gratuity so determined.

13. Sub-section(3) provides a statutory time limit for arranging the payment of gratuity so determined.

14. Sub-section 3-A of Section(7) provides that an employer is obliged to pay the interest on the gratuity from the date on which the gratuity had become payable, till it is paid, with simple interest at such rate fixed by the Government. The proviso to Sub-section 3A provides that when the delay was due to the fault of the employee and the employer had obtained permission from the Controlling Authority for delayed payment, on that



ground, the employer will be exempted from payment of interest.

15. As per sub-section 4(a) of Section 7, in case of any dispute as to the amount of gratuity, the employer shall deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity.

16. As per sub-section 4(c) of Section 7, the Controlling Authority shall conduct an enquiry and after giving reasonable opportunity of hearing to both sides, determine the disputed matters and on finding that if any amount is payable to the employee, it shall direct the employer to pay such amount, as the case may be, such amount as reduced by the amount already deposited by the employer.

17. Therefore, the amount to be determined under sub-section 4(c) of Section 7 includes the amount of gratuity and the interest accrued thereon.



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18. After entering the finding, as provided in sub-section 4(c) of Section 7, the Controlling Authority shall pay the amount deposited including the excess amount, if any, deposited by the employer to the employee.

19. Sub-section (7) of Section 7 contains the provision for appeal. The second proviso to sub-section (7) provides 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.

20. The mandate of the proviso is that, as a condition precedent, 'an amount equal to the amount of gratuity required to be deposited under sub-section(4) is



to be deposited' as a pre-condition for admitting the appeal.

21. It is the submission of the learned counsel for the petitioner and the learned *Amicus Curiae* that the deposit contemplated in the second proviso to sub-section (7) of Section 7 is the deposit of the gratuity amount alone.

22. The amount required to be deposited under sub-section (4) is dealt with in sub clauses (a) and (c) of sub-section (4) of Section 7. The required amount under clause (a) of sub-section (4) of Section 7 is the amount admitted by the employer. Under sub-clause (c) of sub-section (4), the required amount is such amount determined by the Controlling Authority after the enquiry or, as the case may be, such amount as reduced by the amount deposited under clause (a) of sub-section (4).



23. The second proviso to sub-section (7) of Section 7 refers to an amount equal to the amount of gratuity required to be deposited under sub-section (4). Necessarily the amount required to be deposited under sub-section (4) is the amount determined by the Controlling Authority under clause (c) of sub-section (4) of Section 7.

24. What is the amount of gratuity required to be deposited under sub-section 4(c) of Section 7 of the Act is the short question to be considered. The amount required to be deposited under sub-section 4(c) of Section 7 is the amount of gratuity determined by the Controlling Authority, after adjudicating all disputes (including disputes relating to delayed payment) in the enquiry and found payable to the employee. This amount necessarily takes in the interest portion also.



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25. This issue can be approached in another angle also. What is the purpose of pre-deposit? The legislature incorporated the pre-deposit requirement in the Gratuity Act, a welfare legislation, to ensure that there is no delay in payment to the employee once the amount due to him is determined under sub-section (4) of Section 7 of the Act. In Section 7(4)(e), the legislature consciously made a provision that, soon after the deposit is made, the Controlling Authority shall pay the amount to the employee. Likewise, the pre-deposit under the second proviso to sub-section (7) of Section 7 has been enacted to see that once the appeal is decided, if the amount found to be payable to the employee, shall be paid soon after the decision. This amount takes in interest also. Therefore, necessarily the amount equal to the amount of gratuity required to be deposited under Section 4(c) takes in interest also.



26. The legislation must be construed so as to avoid what would otherwise produce irrational and indefensible results that Parliament could not have intended { ***Vide: R. (on the application of Noone) v. Governor of HMP Drake Hall [2010] UKSC 30***}.

27. It is relevant to extract the relevant principle of statutory interpretation, as enunciated by the learned author ***Justice G.P Singh*** in his Principles of Statutory Interpretation [LexisNexis, 15th Edition, Chapter 2, Page Nos.103 and 104], while constructing the provision related to pre-deposit:

“In selecting out of different interpretations “the Court will adopt that which is just, reasonable and sensible rather than that which is none of those things” as it may be presumed “that the Legislature should have used the word in that interpretation which least offends our sense of justice”. If the grammatical construction leads to some absurdity or some repugnance or inconsistency with the rest of the instrument, it may be departed from so as to avoid that absurdity, and



inconsistency. Similarly, a construction giving rise to anomalies should be avoided. As approved by

Venkatarama Aiyar, J:

Where the language of a Statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship of injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.

Nowadays when laws are made by the representatives of the People, it is pro to assume the law-makers enact laws which the society considers as honest, fair and reasonable and thus justice and reason constitute the great general legislative intent in every piece of legislation.”

28. What the legislature intended while using the phrase 'the amount of gratuity required to be deposited' under sub-section(4) of Section 7 is the amount of gratuity with accrued interest.

29. The decisions in **Standard Stonewares and Tiles v. Appellate Authority, BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana, Managing**



Director, (COIRFED) v. Regional Labour Commissioner (Central) and Managing Director, Food Corporation of India v. Deputy Chief Labour Commissioner (Central) consistently held that the deposit as contemplated under second proviso to sub-section (7) of Section 7 is with respect to the amount of gratuity ordered to be paid or deposited by the employer.

30. The learned counsel for the petitioner submitted that **Standard Stonewares and Tiles v. Appellate Authority** correctly decided the question and held that second proviso to sub-section (7) of Section 7 deals with the deposit of the gratuity amount alone.

31. The learned counsel for the petitioner and the learned *Amicus Curiae* submitted that the law declared by this Court in **BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana, Managing Director, (COIRFED) v. Regional Labour Commissioner**



(Central) and Managing Director, Food Corporation of India v. Deputy Chief Labour Commissioner (Central) to the effect that the amount required to be deposited under the proviso to sub-section (7) of Section 7 is the amount adjudicated upon with interest thereon, would be *per incuriam*.

32. Now I shall consider the argument of the learned counsel for the petitioner and the learned *Amicus* based on the principle of *per incuriam*.

33. The “law declared” is the “*ratio decidendi*” of the judgment. The binding nature of a decision is lost if it is *per incuriam*.

34. A decision will be *per incuriam* if
(a) it is given in ignorance of a binding judgment of a higher court or of a court of coordinate jurisdiction; or
(b) if the decision is given in ignorance of the terms of a statute or a rule. (vide: ***Young v. Bristol (1944) KB 718***



and Halsbury's Laws of England, 4th Edition, Volume 26, Page 297 at para 578 and page 300 : A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602].

35. It is not desirable to depend on the principle of *per incuriam* unless it was a “glaring case of obtrusive omission”. [vide: ***Fuerst Day Lawson v. Jindal Exports*** [(2001) 6 SCC 356, 368 at para 23].

36. A five-Judge Bench of the Supreme Court in ***Bajaj Alliance General Insurance Company v. Rambha Devi*** [2024 SCC Online SC 3183] reiterated the rule of “glaring case of obtrusive omission” and held that the principle of *per incuriam* would apply only if the earlier decision was demonstrably wrong and only in exceptional instances where, by obvious inadvertence or oversight, a statutory provision or a binding ruling which was counter to the reasoning had not been noticed.



37. In ***Standard Stonewares***, this Court held that the deposit contemplated under the second proviso to sub-section (7) of Section 7 of the Act is in respect of the entire gratuity amount ordered to be paid by the employer under clause (c) of sub-section (4) and therefore, the deposit as contemplated under the second proviso is the amount of gratuity ordered to be paid to the employer.

38. Clause (c) of sub-section (4) of Section 7, emphasized in paragraph '9' above, undoubtedly refers to the amount directed to be paid by the employer after due inquiry by the Controlling Authority which means the gratuity amount and the interest thereupon. Therefore, the amount of gratuity ordered to be paid at the time of filing the appeal necessarily includes the interest, if any.

39. In ***BL Rubber Industries Private Ltd. v. Ashok Kumar Khurana and Managing Director, Food***



Corporation of India v. Deputy Chief Labour Commissioner (Central), this Court specifically considered the question whether the deposit takes in interest and answered it in the affirmative. In those decisions, this Court correctly constructed the statutory provision and held accordingly. Therefore, those decisions cannot be treated as *per incuriam*, as submitted by the learned counsel for the petitioner and the learned *Amicus*.

40. In ***Standard Stonewares and Tiles v. Appellate Authority***, this Court held that the deposit contemplated under the second proviso to sub-section (7) of Section 7 of the Act was in respect of the entire gratuity amount ordered to be paid by the employer under clause 'c' of sub-section (4) of Section 7. After holding so, the Court further observed that the Statute prescribes only the deposit of gratuity amount and not



the interest thereon. At the risk of repetition, this Court holds that under clause 'c' of sub-section (4) of Section 7, the Controlling Authority, after conducting the enquiry, arrives at the amount found to be payable to the employee, which necessarily carries the interest accrued. The conclusion of this Court in ***Standard Stonewares*** is that the Statute prescribes only the deposit of gratuity amount and not the interest thereon. I am unable to reconcile this ratio with that of the relevant statutory provision. The statutory provision goes counter to the reasoning applied to arrive at the conclusion that the statute prescribes the deposit of only the gratuity amount, and not any interest thereon. Therefore, the observation in ***Standard Stonewares and Tiles v. Appellate Authority*** that the Statute prescribes only the deposit of gratuity amount and not the interest



thereon, which is understood as its ratio, is *per incuriam* and ceases to be binding even on Co-ordinate Benches.

41. The learned counsel for the petitioner further relied on ***Fertilizer Corporation of India v. Union of India*** [2002 SCC Online Jhar 214] and ***Auckland International Ltd v. State of West Bengal*** [2005 SCC Online Cal 775]. I respectfully disagree with the findings recorded in those cases by the Jharkhand and Calcutta High Courts.

42. Referring to Section 107 of the Central Goods and Services Tax Act, 2017, the learned counsel for the petitioner submitted that if the legislature had intended to include the interest also as part of the gratuity amount, it would have necessarily included the phrase 'gratuity plus interest'.

43. The statutory provision, the principles of constructions referred to above and the precedents



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referred to above persuade me to enter into a conclusion that the deposit contemplated under the second proviso to sub-section (7) of Section 7 of the Act refers to the amount of gratuity adjudicated upon with interest thereon.

Therefore, the Writ Petition lacks merits and it stands dismissed. However, the petitioner is granted two weeks time from this day to deposit the amount as directed in Ext.P4.

**K.BABU,
JUDGE**

kkj



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APPENDIX OF WP(C) NO. 11384 OF 2025

PETITIONER EXHIBITS

- | | |
|------------|---|
| Exhibit P1 | TRUE COPY OF THE APPEAL MEMORANDUM
FILED BY THE PETITIONER BEFORE THE 2ND
RESPONDENT DATED 02.09.2023 IN G.A.
NO. 42/2023 |
| Exhibit P2 | TRUE COPY OF THE SUBMISSION FILED BY
THE 1ST RESPONDENT DATED 23.07.2024 IN
G.A. NO. 42/2023 AND NUMBERED AS I.A
NO. 10/2024 BY THE 2ND RESPONDENT |
| Exhibit P3 | TRUE COPY OF THE COMMENTS DATED
23.08.2024 SUBMITTED ON BEHALF OF THE
PETITIONER BY THE COUNSEL IN GA NO.
42/2023 BEFORE THE 2ND RESPONDENT |
| Exhibit P4 | TRUE COPY OF THE ORDER OF THE 2ND
RESPONDENT DATED 16.01.2025 (WRONGLY
SHOWN AS 16.01.2024) IN I.A. NO.
10/2024 IN GA NO. 42/2023 |