

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Common order in OAs 631/94, 813/94, 814/94, 867/94, 868/94
891/94, 896/94, 901/94, 967/94, 994/94
1005/94, 1006/94, 1007/94, 1008/94, 1009/94
229/95, 230/95, 231/95, 232/95, 233/95
695/95, 696/95, 697/95, 698/95, 699/95
700/95, 701/95, 702/95, 703/95, & 704/95

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P. V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

O.A. 631/94

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Mr. M.C. Cherian)

Vs.

1. P.K. Joseph,
Poovakkattil,
Pozhikal,
Vaikom.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment of Gratuity
Act, 1972 and Regional Labour Commissioner (Central)
Cochin, Valanjambalam, Ernakulam. Respondents

(By Advocate Mr. Ajith Prakash. CS for R.1)

O.A. 813/94

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

... Applicant

(By Advocate Mr. M.C. Cherian)

Vs.

1. P.N. Raghavan, Puzhakanadparambu,
Irimpanam, PO, Tripunithura.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment of
Gratuity Act, 1972 and Regional
Labour Commissioner (Central)
Cochin, Valanjambalam, Ernakulam. ... Respondents

(By Advocate Mr. C.S. Ajith Prakash for R.1)

O.A.814/94

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

... Applicant

(By Advocate Mr.M.C.Churian)

Vs.

1. T.K.Kesavan,
Thundiparambil,
Valappikkadavu,
Poonithura, Tripunithura,
Ernakulam District.
2. Assistant Labour Commissioner(Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment of
Gratuity Act, 1972 and Regional
Labour Commissioner (Central)
Cochin, Valanjambalam, Ernakulam. ... Respondents

(By Advocate Mr.C.S.Ajith Prakash (For R.1)
Mr. T.C.G.Swamy (Amicus Curiae)

O.A.867/94

Executive Engineer, (Construction)
Southern Railway,
Ernakulam.

... Applicant

(By Advocate Mr. M.C.Churian)

Vs.

1. K.C.Divakaran,
Kallauvelil, Veljore,
Mavelloore PO,
Kottayam Dist.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment of Gratuity
Act, 1972 and Regional Labour Commissioner
(Central) Cochin, Valanjambalam, Ernakulam.... Respondents

(By Advocate Mr. PR Ramachandra Menon (represented)--R2&3.
Mr. V.R.Ramachandran Nair for R.1

OA. 868/94

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

.... Applicant

(By Advocate Mr. M.C.Churian)

Vs.

1. E.C.Varkey,
Padinjarethrangadu House,
Kanjiramattom PO.
2. Assistant Labour Commissioner
(Central) and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment
of Gratuity Act, 1972 and Regional
Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam.

... Respondents

(By Advocate Mr.PR Ramachandra Menon (represented) for R.2&3)

O.A.891/94

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

... Applicant

(By Advocate Mr. M.C.Churian)

Vs.

1. A.K.Raman,
Chavelipadam House,
Eroor South,
Tripunithura.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment of
Gratuity Act, 1972, and Regional
Labour Commissioner (Central),
Cochin, Valanjambalam, Ernakulam.

... Respondents

(By Advocate Mary Help John David for R2&3)

O.A. No.896 of 1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

..Applicant

By Advocate Mr M C Cherian

Vs

- 1 E P Babu,
Illikalparambu House,
Vyttila, Cochin-19.
- 2 Assistant Labour Commissioner(Central),
and Controlling Authority, Cochin,
Valanjambalam, Ernakulam.
- 3 Appellate Authority under Payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central), Cochin,
Valanjambalam, Ernakulam. ..Respondents

By Advocate Mr James Kurian.

O.A. No.901 of 1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr M C Cherian.

Vs

- 1 K Thankappan,
Naduvelemuriparambu,
Eroor P.O.,
Tripunithura.
- 2 Assistant Labour Commissioner(Central)
and Controlling Authority, Cochin,
Valanjambalam, Ernakulam.
- 3 Appellate Authority under Payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central), Cochin,
Valanjambalam, Ernakulam. .. Respondents

O.A. No.967 of 1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr M C Cherian.

Vs

- 1 T S Thankappan,
Thachiparambu,
Eroor North P.O.,
Tripunithura.
 - 2 Assistant Labour Commissioner(Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
 - 3 Appellate Authority under Payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central), Cochin, Valanjambalam,
Ernakulam.
- .. Respondents

O.A. No.994 of 1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr M C Cherian.

Vs

- 1 P N Sudhakaran,
Pularikuzhiyil House,
Kulaittikara P.O.,
Kanjiramattom.
 - 2 Assistant Labour Commissioner (Central)
and Controlling Authority, Cochin,
Valanjambalam, Ernakulam.
 - 3 Appellate Authority under Payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central), Cochin,
Valanjambalam, Ernakulam.
- .. Respondents

By Advocate Mr V R Ramachandran Nair for R - 1.

O.A. No.1005/1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr M C Cherian.

Vs

- 1 A M Kunjumon,
Kapputtiparambil,
Vymeethiyil,
Near Tripunithura Railway Station,
Tripunithura.
- 2 Assistant Labour Commissioner (Central)
and Controlling Authority, Cochin,
Valanjambalam, Ernakulam.
- 3 Appellate Authority under payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central) Cochin,
Valanjambalam, Ernakulam. .. Respondents

O.A.No.1006/1994

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr M C Cherian.

Vs

- 1 K Gowri,
Koolimittam House,
Muttam,
Thaikattukara P.O.,
Alwaye.
- 2 Assistant Labour Commissioner (Central)
and Controlling Authority, Cochin,
Valanjambalam, Ernakulam.
- 3 Appellate Authority under payment of
Gratuity Act 1972, and Regional Labour
Commissioner (Central), Cochin,
Valanjambalam, Ernakulam. .. Respondents

By Advocate Mr Asok M Cherian for Respondent - 1.

O.A. 1007/94

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

....Applicant

By Advocate Mr. M.C. Cherian

Versus

1. M.K. Damodaran
Munduthra Veedu,
Thekkumbhagam,
Tripunithura
2. Assistant Labour Commissioner (Central)
and Controlling Authority.
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority under Payment of
Wages Act, 1972 and Regional
Labour Commissioner (Central)
Cochin, Valanjambalam
Ernakulam.

...Respondents

By Advocate Mr. V. R. Ramachandran Nair

O.A. 1008/94

Executive Engineer (Construction),
Southern Railway,
Ernakulam..

...Applicant

By Advocate Mr. M.C. Cherian

Versus

1. E.K. Karunakaran
Erumpuzhaparambil,
Valapukadavu, Poonithura,
Tripunithura.
2. Assistant Labour Commissioner (Central)
and Controlling Authority
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority under Payment of
Wages Act, 1972 and Regional
Labour Commissioner (Central)
Cochin, Valanjambalam
Ernakulam.

...Respondents

O.A. 1009/94

Executive Engineer (Construction)
Southern Railway
Ernakulam.

...Applicant

By Advocate Mr. M. C. Cherian

Versus

1. V.R. Gowri
Thekkumbhagam Kinodi House,
Tripunithura.
 2. Assistant Labour Commissioner,
(Central) and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
 3. Appellate Authority under payment of Gratuity Act
1972 and Regional Labour Commissioner (Central)
Cochin, Valanjambalam
Ernakulam..
- ... Respondents

By Advocate Mr. Asok M. Cherian for R-1

O.A. 229/95

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

...Applicant

By Advocate Mr. M.C. Cherian

Versus

1. C. C. Kuttan,
Karakayil House,
Eroor P.O.
Tripunithura.
 2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valajambalam,
Ernakulam.
 3. Appellate Authority under Payment of Gratuity
Act 1972, and Regional Labour Commissioner
(Central), Cochin, Valanjambalam,
Ernakulam.
- ... Respondents

O.A. 230/95

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

...Applicant

By Advocate Mr. M. C. Cherian

Versus

1. P. Sivaraman,
Narayana Nivas,
Punnuruthy, Vyttila,
Cochin-10
 2. Assistant Labour Commissioner (Central)
and Controlling Authority
Cochin, Valanjambalam
Ernakulam.
 3. Appellate Authority under Payment of Gratuity
Act 1972 and Regional Labour Commissioner
(Central) Cochin, Valanjambalam,
Ernakulam.
- ...Respondents

O.A. 231/95

Executive Engineer (Construction)
Southern Railway,
Ernakulam.

...Applicant

By Advocate Mr. M. C. Cherian

Versus

1. P.A. Gokulan,
Payyammattathil House,
Vellarappilly South P.O.
Ernakulam District
 2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
 3. Appellate Authority under Payment of Gratuity
Act 1972, and Regional Labour Commissioner (Central)
Cochin, Valanjambalam,
Ernakulam.
- ...Respondents

OA No. 232/1995

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam. .. Applicant

By Advocate Mr. MC Cherian

Vs.

1. K.C. Kunjan,
Kakkathuruthil House,
Eroor P.O.,
Tripunithura.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam. .. Respondents

OA No. 233/1995

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam. .. Applicant

By Advocate Mr. MC Cherian

Vs.

1. C.K. Bhaskaran,
Chakkaraparambil House,
Irimpanam P.O.,
Ernakulam Dist.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam. .. Respondents

DA No. 695/1995

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr. MC Cherian

Vs.

1. A.K. Mani,
Aradimattathil,
Chethikode P.O.,
Kanjiramattom.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam.

.. Respondents

DA No. 696/1995

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr. MC Cherian

Vs.

1. M. Balakrishna Pillai,
Nadackal House,
Kulaittikara P.O.,
Kanjiramattom, Ernakulam Dist.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam.

.. Respondents

OA No. 697/95

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr. MC Cherian

Vs.

1. Kunjukunju,
Rly. Quarters No. A.4,
Tripunithura R.S.,
Tripunithura.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam.

.. Respondents

OA No. 698/95

1. Executive Engineer
(Construction),
Southern Railway,
Ernakulam.

.. Applicant

By Advocate Mr. MC Cherian

Vs.

1. C.C. Joseph,
Chettiparambil,
Kaloor,
Cochin-17.
2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority
under Payment of Gratuity Act, 1972
and Regional Labour Commissioner
(Central), Cochin,
Valanjambalam, Ernakulam.

.. Respondents

O.A. No.699 of 1995.

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. T.M. Ammini,
Kalathusseril House,
Irimpayam P.O.,
Thalayolaparambu.
 2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
 3. Appellate Authority under payment
of Gratuity Act 1972, and Regional
Labour Commissioner (Central) Cochin,
Valanjambalam, Ernakulam.
- .. Respondents

O.A. No.700 of 1995.

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. K.M. Syamala,
Pamthadathil,
Irumpayam P.O.,
Kottayam District.
 2. Assistant Labour Commissioner (Central)
and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
 3. Appellate Authority under Payment of
Gratuity Act, 1972, and Regional
Labour Commissioner (Central)
Cochin, Valanjambalam, Ernakulam.
- .. Respondents.

O.A. No. 701 of 1995.

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. K. Janaky,
Velyparambil,
Vymathi House,
Tripunithura.
2. Assistant Labour Commissioner
(Central) and Controlling Authority,
Cochin, Valanjambalam, Ernakulam.
3. Appellate Authority under Payment
of Gratuity Act 1972, and
Regional Labour Commissioner
(Central) Cochin, Valanjambalam,
Ernakulam.

.. Respondents

O.A. No.702 of 1995.

Executive Engineer(Construction),
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. V.V. Varghese,
Veeramana House,
Ambaloor P.O.,
Kanjiramattam (Via).
2. Assistant Labour Commissioner
(Central) and Controlling
Authority, Cochin,
Valanjambalam, Ernakulam.
3. Appellate Authority under
Payment of Gratuity Act 1972,
and Regional Labour Commissioner
(Central) Cochin,
Valanjambalam, Ernakulam.

.. Respondents

(By Advocate Mr. Ajith Prakash for R.1)

O.A. No.703 of 1995.

Executive Engineer (Construction),
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. C.P. Chellamma,
Chenakkalayil House, Vellore,
Mevalloor P.O., Kottayam District.
2. Assistant Labour Commissioner
(Central) and Controlling
Authority, Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority under Payment
of Gratuity Act 1972, and
Regional Labour Commissioner
(Central), Cochin, Valanjambalam,
Ernakulam.

.. Respondents

O.A. No.704 of 1995.

Executive Engineer(Construction)
Southern Railway,
Ernakulam.

.. Applicant

(By Advocate Shri M.C. Cherian)

Vs.

1. P. Kesavan Nair,
Therayil House,
Vellor, Mevelloor P.O.,
District Kottayam.
2. Assistant Labour Commissioner
(Central) and Controlling
Authority, Cochin, Valanjambalam,
Ernakulam.
3. Appellate Authority under Payment
of Gratuity Act 1972, and
Regional Labour Commissioner
(Central) Cochin, Valanjambalam,
Ernakulam.

.. Respondents

The Applications having been heard on 1.2.1996, the Tribunal on the same day delivered the following:

ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN:

The facts of these cases are similar and so are the contentions raised.

2. Applicant - Railway, challenges orders made by the authority under the Payment of Gratuity Act, 1972 (confirmed by the Appellate Authority), directing payment of gratuity to party respondents -erstwhile casual labourers, since regularised. Shri M.C.Churian, learned counsel for the Railways who argued his case with great thoroughness, submitted that gratuity need be paid only when the relationship of master and servant ceases, and that it still subsists. According to him, termination of service alone creates the liability to pay gratuity. It is argued further that gratuity would be payable, only if no other retiral benefit is admissible.

3. In answer, counsel for respondents - workmen would submit that gratuity is a benefit gained by reason of the service rendered by respondents as casual employees and that this is an entitlement unrelated to their subsequent appointment as regular departmental officials. The relationship as master and servant have ended for them in the capacity as casual employees, submit respondents. They submit further that what is gained in return for service rendered cannot be taken away or obliterated by a subsequent event, namely the regular appointment.

4. All the party respondents commenced service as casual employees. After years of chequered career, they obtained temporary status, and at a yet later point of time regular appointments. This was not as a natural corollary to their

casual service, but the result of a scheme brought into existence by orders of the Apex Court in Inderpal Yadav's case (1985(2)SCC 648). The question that comes into sharp focus is whether gratuity is an entitlement or not. Gratuity is anything but a gratuitous payment. At one time gratuity was considered as a gift or a reward, in the munificence of the employer. The winds of change have swept the landscape, bringing in its wake a new socio economic philosophy . New concepts gained ground. Today gratuity, like pension, is considered an entitlement, not a bounty. If authority is needed for this proposition, it is legion. In DCM Company Limited vs. The Workmen, AIR 1970 SC 919 , the Apex Court held that gratuity is 'not a gift but a payment for service rendered'. The same view had been taken by the Court earlier in India Hume Pipe Company Ltd. vs. The Workmen ,AIR 1960 SC 251, and later in Strawboard Manufacturing Co.Ltd., vs. Its Workmen ,1977 SCC (L&S) 243, and in Bakshish Singh vs. M/s. Darsan Engineering Works & others , 1994 SCC (L&S) 302. It is too late in the day, to contend that gratuity is a payment by grace. In interpreting a welfare legislation like the Payment of Gratuity Act and determining whether benefits are available to a class of persons we must adopt the interpretive canons that govern such areas. The Supreme Court has observed that a liberal and purposive interpretation, advancing the objects sought to be achieved, and suppressing the mischief sought to be avoided, must be adopted while dealing with legislations referable to welfare measures or the Directive Principles of the Constitution of India.(See Buckingham & Carnatic Co. Ltd., vs. Venkatesh and another,AIR 1964 SC 1272; Works Manager, Central Railway Workshop Jhansi vs. Vishwanath,AIR 1970 SC 488; B.M.Lakshmana Murthy vs. ESI Corpn, Bangalore,AIR 1974 SC 759 etc.

5. It is admitted by both sides that a person answering the description of an employee, in Section 2(e) will be entitled to receive gratuity subject to the other conditions of eligibility. Services of respondents herein as casual employees came to an end otherwise than by superannuation. Section 2(e) read with Section 4(1)(b) and Section 2(q) is therefore attracted. Even so, Shri Cherian would submit that the relationship of employer and employee continues and that gratuity is not payable during the subsistence of such relationship. Services of party respondents as casual employees came to an end, irrespective of the fact that they obtained appointments as regular employees against regular posts in a cadre. In quality, both services are unrelated and different. A casual employee does not hold a post and he is governed by the provisions of the Industrial Disputes Act. A regular employee holds a post in the contemplation of Article 310 of the Constitution of India. The employments are entirely different and distinct, with different incidents. We cannot assent to the view that regular employment, is a continuation of casual employment. One ceases, when the other begins. When casual employment ceases, that event attracts the consequences that flow from termination of service. The event that attracts gratuity, is the termination of casual service. What is gained as a reward for casual service, cannot be taken away or obliterated by reason of a different and distinct employment. For that matter, gratuity is not a benefit to the exclusion of other benefits. The position has been put beyond doubt by the Supreme Court. In India Hume Pipe Co. Ltd., vs. The Workmen, AIR 1960 SC 251, the Court pointed out that grant of one benefit does not exclude other benefits, and that there is no question of 'double


payment'. The same view is reiterated in the later decision in Bakshish Singh vs. M/s. Darsan Engineering Works & others, 1994 SCC(L&S) 302.


6. The position that emerges is that the service of party respondents as casual employees (different in quality and content from regular employment) came to an end. That event, attracts gratuity under the Payment of Gratuity Act. The subsequent event of a different employment cannot obliterate or destroy a substantive right gained by party respondents by reason of the salutary provisions of a welfare legislation, referable to Part IV of the Constitution of India, notwithstanding the fact that part of casual service will be reckoned notionally for purpose of reckoning pension. Therefore, the awards made by the authorities below is not vitiated by any error or misdirection, much less by errors apparent on the face of the record.

7. We dismiss the applications. However, we are not awarding costs as learned counsel for the Railways submits that these applications were filed with a view to get an authoritative pronouncement in causes, that are recurring.

8. We record appreciation of the able assistance rendered to us by Shri T.C.Govindaswamy as amicus curiae.

Dated the 1st February, 1996.


P.V.VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN

CERTIFIED TRUE COPY

Date 12.2.96


Deputy Registrar

njj/2.2




12/2/96