2026 (7) KLR 289

High Court of Kerala
Devan Ramachandran & Basant Balaji; JJ.
W.A. No. 896 of 2026; 28 July 2026
Vastyan v. State of Kerala

Payment of Gratuity Act 1972 - Section 4(6) - Kerala State Civil Supplies Corporation Helpers Service Rules 1978 - Rule 16 - Gratuity Forfeiture Restrictions - Impermissibility of Withholding Gratuity for Minor Penalties - Overriding Statutory Authority.

Forfeiture of gratuity is permissible only upon termination of an employee's service for specific acts, such as willful omission or negligence causing damage/loss, or riotous/disorderly conduct involving moral turpitude. Recovery of loss from gratuity as a minor penalty is not compliant with the Payment of Gratuity Act, 1972, specifically when the employee has not been terminated. Section 14 of the Payment of Gratuity Act, 1972, ensures that its provisions override any inconsistent service rules, instruments, or contracts regarding gratuity. *[Para 2, 13, 15]*

The appellant, an employee of the Kerala State Civil Supplies Corporation Ltd. ('Supplyco'), was held liable for stock discrepancies identified during his tenure at a 'Maveli Store'. Although the appellant was not terminated from service, the Corporation attempted to recover the alleged loss of Rs. 4,32,407.19 from his gratuity. The Court found that under Section 4(6) of the Payment of Gratuity Act, 1972, gratuity can only be forfeited if an employee's service is terminated for reasons such as willful negligence causing loss or conduct involving moral turpitude. Since the appellant faced no such termination, the Court held that the respondents were not legally justified in withholding gratuity for the recovery of alleged losses. The Appeal was allowed, and the recovery of amounts from the appellant's gratuity was set aside.

<ins>*Cases Referred*</ins>

- *Western Coal Fields Ltd. v. Manohar Govinda Fulzele*, 2025 (2) KHC 112.

Against the Judgment dated 24.03.2026 in W.P. (C) No. 11564 of 2015

Appellant/Petitioner By Advs. M.Narendra Kumar Smt.Harshadev M., Lal Kumar N.

Respondents/Respondents By Advs Smt.Molly Jacob – S.C. Gp - Sri. Manu .M Thomas

J U D G M E N T

Devan Ramachandran, J.

While the appellant was serving the 2nd respondent – Kerala State Civil Supplies Corporation Ltd. ('Supplyco'), he was placed in charge of a 'Maveli Store'. He was, thereafter, imputed for causing difference in the value of stock and consequent loss to the 'Supplyco'; and was charge-sheeted and asked to reply.

2. Furthermore, going by Section 4(6) of the Payment of Gratuity Act, 1972, it is only in the case where an employee, whose services are terminated on account of an act, willful omission or negligence causing damage or loss to the employer, can the gratuity be forfeited, to the extent of such damage or loss occurred. The only other manner of forfeiting gratuity – either wholly or partially – is if such termination happens on account of riotous, or disorderly conduct, or having caused violence; which constitutes an offence involving moral turpitude, and that too is in the course of employment.

3. The appellant admits that he preferred Ext.P5 reply, wherein, he denied every allegation against him; but that, instead of conducting a proper enquiry, the Additional General Manager of the 'Supplyco' proceeded to issue Ext.P6 order against him, mulcting him with a liability of Rs.4,32,407.19, alleging that this was the amount found deficient in the stock. He says that, even though he was not imposed with any other punishment, and though Ext.P6 did not mention that his gratuity will be withheld, such detriment is also imposed upon him; and that, for this, the 2nd respondent maintains that he had agreed for this. He asserts that he had made no such concession and that it was not necessary because, according to him, it has not been proved that he had caused any loss to the 'Supplyco'.

4. Sri.Narendra Kumar M. - learned counsel for the appellant, pointed out that, even though the facts are as above, the learned Single Judge has refused to intervene; and consequently, that his client has been constrained to file this Appeal.

5. Smt.Molly Jacob – learned Standing Counsel for the 'Supplyco', countered the afore submissions, saying that, as per the Kerala State Civil Supplies Corporation Helpers Service Rules, 1978 (hereinafter referred to as 'the Rules' for short), recovery from pay of an employee for causing any pecuniary loss to the Corporation, by negligence or breach, is only a minor penalty; for which, a domestic enquiry is not contemplated. She relied upon Rule 16(ii) of the 'Rules' to assert that it is only in the case of a major penalty, a domestic enquiry becomes necessitated; but that, since the 'Supplyco' only decided to recover the loss from the appellant, the consequential orders can only be seen to be inflicting a minor penalty.

6. Smt.Molly Jacob then argued that, since the appellant had agreed – as evident from Ext.P5 – that the stock can be inspected in his absence, he being hospitalized at that time; and since he was given an opportunity of being heard before Ext.P6 had been issued, the proceedings cannot be challenged by him, as has been done. She added that, in any event, the appellant is not challenging the enquiry proceedings, but only the withholding of penalty from him, which, she asserted, is permissible by the 'Rules', particularly Rule 16 thereof, which authorises recovery from his service benefits.

7. We agree with Smt.Molly Jacob that the appellant is not challenging the domestic enquiry against him per se, but only the denial of gratuity, on the strength of Ext.P6 order. However, Ext.P4 is a Charge Memo issued to the appellant which imputes that large amounts of loss had been caused; and that he was responsible for the same. The Charge Memo does not mention whether the action proposed against the appellant is to culminate in a minor penalty, or a major one; and it is only through Ext.P6 one gathers that only recovery of the alleged loss has been ordered.

8. Moving on, the sole reason why the appellant has been denied gratuity is that he had conceded that the alleged loss can be recovered from his benefits; and for this, the respondents rely upon Ext.R2(a) – which is a copy of the Hearing Sheet maintained by the Disciplinary Authority. In the said Hearing Sheet, it is recorded that the appellant has agreed that the loss can be adjusted from the benefits due to him; but the question is whether this by itself would enable the respondents to do so against his gratuity; as has been proposed to be done.

9. It is pellucid from the pleadings of the respondents that, at the time when the stock was verified, the appellant was in hospital; and this is manifest from Ext.R2(b) submission given by him. This is also fully acceded to by the respondents; and they say that, based on this, the stock was so verified in the absence of the appellant; to finally conclude that an amount of Rs. Rs.4,32,407.19 is due from him.

10. However, what really worries the conscience of this Court is that Ext.P6 does not talk about a quantification through a process that is recognized by law; but solely that an inspection was conducted in the absence of the appellant and liability mulcted upon him, merely because he was not in a position to offer contraevidence. This is a classic case where negative evidence has been used; and the assertions of the respondents have been found against the appellant singularly based on his alleged concession, found in Ext.R2(a) Hearing Sheet. It cannot be lost sight of that Ext.R2(a) is only a Minutes of the Hearing – and not an official proceeding – based on which, Ext.P6 has been issued.

11. Be that as it may, the germane question before us is whether denial of gratuity to the appellant in the afore circumstances can be justified.

12. For this, when one reads Ext.P6, it only says that the appellant has been found guilty of causing a loss of Rs.4,32,407.19; and demanding of him to repay the same within 30 days. There is not even a whispering mention therein, that his gratuity will not be honoured, or any amount will be adjusted from his service benefits.

13. This is pertinent because, as per Rule 16 of the ‘Rules’, it is only in the case of recovery from the pay or part of it, for the purpose of making good the proven pecuniary loss, can the punishment be construed to be a minor one. In this case, what is attempted is to withhold the gratuity of the appellant, which, we are certain, cannot fall within the compass of that provision.

14. In Western Coal Fields Ltd. v. Manohar Govinda Fulzele [2025 (2) KHC 112], the Honourable Supreme Court has recently held that the forfeiture of gratuity is permissible where an employee’s service is terminated for misconduct, constituting offences involving moral turpitude, even when there is no conviction by Criminal Court. The facts of this case are wholly different; and admittedly, the appellant was never terminated from service, nor was he involved in any charge involving moral turpitude. The sole allegation against him, as noticed supra, is that, while he was in charge of the Maveli Store, there was some discrepancy in stock, which was then inspected to be found against him through Ext.P6. We are, therefore, without doubt that this judgment can only travel in favour of the appellant and not Contrarily.

15. We are persuaded to find in favour of the appellant also in view of Section 14 of the Payment of Gratuity Act, 1972, which renders it luculent that its provisions will override any inconsistent provision in any other enactment or instrument or contract.

In such circumstances, we allow this Appeal and set aside the impugned judgment; and order that the recovery of amounts, as proposed from the gratuity of the appellant, cannot be done by the respondents based on Ext.P6.

However, every other liberty to the respondents, to recover the alleged loss through the process of law, is left open.

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