

**(1996) 01 KL CK 0050**

**High Court Of Kerala**

**Case No:** O.P. No. 733 of 1991

Travancore Plywood Industries  
Ltd.

APPELLANT

Vs

Regional Joint Labour  
Commissioner and Others

RESPONDENT

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**Date of Decision:** Jan. 19, 1996

**Acts Referred:**

- Payment of Gratuity Act, 1972 - Section 13, 14, 4(6)

**Citation:** (1996) 73 FLR 1413 : (1996) 2 LLJ 85

**Hon'ble Judges:** K. Narayana Kurup, J

**Bench:** Single Bench

**Advocate:** B. Gopakumar, for the Appellant; B. Suresh Kumar and A.V.M. Salahudeen, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

K. Narayana Kurup, J.

The third respondent was an employee of the petitioner - Company. He retired on superannuation on June 19, 1984. Since the petitioner refused to pay gratuity amount due to the third respondent he approached the second respondent Controlling Authority under the Payment of Gratuity Act, 1972 (for short "the Act") for relief. Exhibit P1 is the order passed by the second respondent directing the petitioner to pay to the third respondent a sum of Rs. 14,450.34 being the balance amount of gratuity due after adjusting a sum of Rs. 6,207.20 being the advance amount received by the third respondent. The petitioner took up Exhibit P1 in appeal before the first respondent, who by Exhibit P-2 confirmed Exhibit P1 rejecting the petitioner's appeal.

2. The thrust of the petitioner's contention before the respondents 1 and 2 was that the third respondent is entitled to get the gratuity amount only on final settlement

of his account - What is treated by the petitioner - Company as failure to settle the account by the third respondent is the latter's failure to surrender possession of an extent of 30 cent of land which according to the petitioner - company belongs to them and has been given to the third respondent under a licence and the third respondent is bound to surrender the same as and when directed to do so by the petitioner - Company. The third respondent has filed a counter affidavit in which it is stated as follows:

3rd respondent was working as a chargeman in the petitioner company and has retired on superannuation on June 19, 1984. 3rd respondent did not apply for licence for cultivating the portion of the properties belonging to the petitioner as alleged in the O.P. As the property in the possession of the 3rd respondent does not belong to the petitioner company, the question of surrender of the same does not arise at all. The petitioner company has no right, title or the authority over the property possessed by the 3rd respondent as the same is Attupuramboke. 3rd respondent was in absolute possession and enjoyment of the property for the past more than 35 years and the tax receipts were also produced before the respondents 1 and 2. Before the authorities below the contention of the petitioner company was that property was given on lease to the 3rd respondent and the extent allotted was 30 cents of land. 3rd respondent actually is in possession of 50 cents of property. The allegation was that the property possessed by the 3rd respondent is covered by title deeds. From the alleged title deed produced by the company and the tax receipts produced by the 3rd respondent it could be seen that the sub division and the survey number are different. That itself would show that the property possessed by 3rd respondent does not belong to the petitioner. The petitioner company produced before the authorities below certain documents including an agreement alleged to have been executed by 3rd respondent. Third Respondent denied his signature in the agreement the documents are put up and documents and the signature of the 3rd respondent was forged. The petitioner company has no right, title of authority over the property possessed by the 3rd respondent."

3. Having regard to the rival contentions I am satisfied that the controversy between the parties involves adjudication of disputed question of fact relating to title, possession etc. to immovable property which cannot be effectively done in proceedings under Article 226 of the Constitution of India. Accordingly, the petitioner is relegated to have recourse to appropriate remedies available to them under other forums.

4. That apart, the main question is whether the petitioner - company will be justified in withholding the gratuity amount due to the third respondent on the specious plea that the third respondent failed to surrender that land which is in occupation by him. The eligibility of the third respondent's gratuity has to be decided on the basis of the provisions contained in the Act, under which the amount by way of gratuity due to an employee cannot be withheld otherwise than by fulfilling the conditions

contained in Sections 4(6) 13 and 14 of the Act. Under the act, the employer is entitled to withhold the gratuity of an employee only if the termination of the employee is u/s 4(6) of the Act. Here the employer has no case that the employer has terminated the service of the employee on any of the grounds mentioned in Section 4(6) of the Act. The petitioner-company therefore, is not entitled to withhold the gratuity on the pretext that the third respondent is in occupation of the land belonging to the petitioner company. That apart, it has to be noted that the legislature itself has granted statutory protection for payment of gratuity to an employee by enacting Section 13 under which no gratuity payable under the Act is liable to attachment in execution of any decree or order of any civil, revenue or criminal court. Section 14 of the Act and Rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument or contract having effect by virtue of any enactment other than the Act. Section 4(6) read with Sections 13 and 14 is a complete answer to the petitioner's action in withholding the terminal benefit by way of gratuity due to third respondent employee. In other words, amount of gratuity due to an employee can be withheld only on any of the grounds mentioned in the Act and not otherwise and at any rate refusal of the employee to surrender the land in his occupation in violation of the directive issued by the petitioner - company-employer, even if it is assumed that the land belongs to the employer cannot be treated as failure to settle the account by the employee thereby forming a basis for withholding dispersal of arrears of gratuity.

5. For the afore said reasons, I am of the view that the petitioner is not entitled to reliefs prayed for in this Original Petition as the authorities under the Act are well within their powers in ordering payment of gratuity to the third respondent and the said amount cannot be withheld on the ground stated by the petitioner as already noted.

In the result, the Original Petition is dismissed.