

Sub: SETTLEMENT OF GRATUITY IN RESPECT OF LABOUR ABSORBED/REGULARIZED/INDUCTED & ENROLLED AS DEPARTMENTAL LABOUR, DIRECT PAYMENT LABOUR SYSTEM AND NO WORK NO PAY (NWNP) LABOUR SYSTEM – NON-INCLUSION OF THE PERIOD OF SERVICE RENDERED UNDER EX-H&T CONTRACTORS/LABOUR COOP. SOCIETIES PRIOR TO INDUCTION.

The erstwhile contract workers who were working in the notified depots of Kerala Region were regularized by FCI as Direct Payment System workers w.e.f. 1.5.1996. As per the agreed terms and conditions of their engagement under DPS, they were / are entitled for Gratuity as per Payment of Gratuity Act w.e.f. the date of their induction / regularization in FCI under D.P.S.

The ex-DPS workers of various Direct Payment System depots of Kerala Region had filed collective / individual applications before the ALC(C) and Controlling Authority, Trivandrum seeking directions to FCI for payment of Gratuity to them by reckoning the period of their service rendered under various Handling & Transport Contractors / Labour Cooperative Societies prior to their induction under Direct Payment System in FCI, as continuous service for payment of Gratuity. The ALC(C) upheld the prayer of the workers in all these cases.

The GM, RO, Kerala filed WPs before the Hon'ble High Court of Kerala at Ernakulam against the above decision of the ALC(C) but the same was also dismissed in favour of the workers by its judgement dated 12.7.05.

Subsequently, the GM, RO, Kerala filed writ Appeals before the Division Bench of the Hon'ble High Court of Kerala against the Single Judge's judgement dated 12.7.05. The Hon'ble Division Bench delivered its common judgement on 18.8.06 in W.A. No. 1953 of 2005 alongwith W.A. No. 1942 / 2005 in favour of FCI settling various similar claims of the workers vide said judgement (copy enclosed).

The operational part of the judgement dated 18.8.06 in the W.A. No. 1953 of 2005 is reproduced below :-

".....in the absence of any express provision contained in the Payment of Gratuity Act to rope in such period as service rendered while the workmen were under the employment of third person, the appellants cannot be mulcted with the liability to pay gratuity reckoning such past service as well. The claim if any by the workmen can only be laid against the employer under whom they were employed during that period.

Leaving open the right of the workmen to claim Gratuity from whom so ever concerned for the past services they rendered, we hold that the appellants are not liable to pay gratuity for the service rendered by the workmen to the private contractors or to the society prior to the introduction of the Direct Payment System. In the circumstances, we set aside the judgement of the learned Single Judge and also the orders passed by the Controlling Authority and the Appellate Authority and allow the appeals."

Sd/-  
V.K. Bali  
( Chief Justice )

Sd/-  
P.R. Raman  
( Judge )

Contd...2



However, K.P. Thankamani & Ors. Challenged the above judgement dated 18.8.06 of the Hon'ble High Court of Kerala before the Hon'ble Supreme Court of India by filing the SLP No. 4744 / 2007 but the same was dismissed by the Hon'ble Supreme Court vide its judgement dated 8.3.2007 ( copy enclosed ).

The above judgement of the Hon'ble Supreme Court may be utilized for settling similar claims / disputes / Court cases of workers in the respective Zones / Regions.

**Encl: as above.**

**( ANIL KAPOOR )  
ASSTT. GENERAL MANAGER (IR-L)**

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