



2026:KER:47052

WP(C) No.45358 of 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM “CR”

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

MONDAY, THE 29TH DAY OF JUNE 2026 / 8TH ASHADHA, 1948

WP(C) NO. 45358 OF 2024

PETITIONER/S:

THE TIRUR SERVICE CO-OPERATIVE BANK LTD.NO.10094,
REPRESENTED BY ITS SECRETARY, TIRUR P.O., MALAPPURAM
DISTRICT, PIN - 676101

BY ADVS.
SRI.ARJUN RAGHAVAN
SHRI.T.R.HARIKUMAR

RESPONDENT/S:

MOIDEEN M.
MANDAYAPURATH HOUSE, MEENADATHOOR P.O., TANALUR,
MALAPPURAM DISTRICT, PIN - 676307

BY ADVS.
SHRI.THAREEQ ANVER
KUM.K.SALMA JENNATH
SHRI.K.SHAMSUDHEEN
SRI.ARUN CHAND
SHRI.RASSAL JANARDHANAN A.
SHRI.MOYIN K.P.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
26.11.2025, THE COURT ON 29.6.2026, DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner is a Primary Agricultural Credit Society, registered under the provisions of the Kerala Co-operative Societies Act, 1969. The challenge raised in this writ petition is against the Exhibit P12 order passed by the District Consumer Disputes Redressal Commission, Malappuram, in C.C. No.259/2022. The said complaint was submitted by the respondent herein, who was an employee of the petitioner.

2. The said complaint was submitted by the respondent, seeking the arrears of gratuity amount, which according to the respondent was receivable by him. The respondent was in the service of the petitioner, from 1.11.1978 to 31.03.2016 and he retired from service after rendering 38 years of service, at a time when he was drawing a salary of Rs.55,659/-. According to the respondent, the total amount payable as gratuity as per the provisions of the Payment of Gratuity Act was Rs.12,20,217/- but the petitioner paid only an amount of Rs.10 lakhs, at the time of his retirement on 31.03.2016. According to the respondent, even though he approached the petitioner on several occasions, the balance amount towards gratuity was not paid, and the complaint was submitted



before the District Commission in such circumstances.

3. The petitioner entered appearance and submitted a reply version disputing the claim. The maintainability of the complaint was also raised, as according to the petitioner, the respondent does not satisfy the definition of 'Consumer' as contemplated under Section 2(7) of the Consumer Protection Act, 2019. Besides, it was also contended that, in the light of Section 69 of the Kerala Co-operative Societies Act, 1969, where an exclusive remedy is contemplated to resolve the dispute between the society and its employees, the respondent could not have invoked the jurisdiction of the District Commission. It was also contended that, the claim is beyond the period of limitation as the respondent accepted the amount of Rs.10 lakhs on his retirement in 2016, and raised the claim only in the year, 2022. It was the further contention of the petitioner that, the claim of gratuity being a statutory claim under the provisions of the Payment of Gratuity Act, and that, there is a remedy provided under the Act before the Controlling authority specified under the Act to resolve the dispute regarding the gratuity, the complaint could not have been entertained by the District Commission.

4. Although, the petitioner submitted an Interlocutory Application ie. I.A.No.52/2023 raising the question of maintainability,



the same was rejected as per Ext.P13 order as well. Thereafter, the District Commission proceeded to determine the complaint on merit and ultimately as per Ext.P12 order, allowed the complaint by directing the petitioner to pay an amount of Rs.2,20,217/- being the balance amount of gratuity along with Rs.25,000/- as compensation and also a further sum of Rs.10,000/- as the cost of proceedings. This writ petition is submitted by the petitioner in such circumstances challenging the order of the District Commission.

5. The respondent filed a detailed counter affidavit, opposing the reliefs sought in the writ petition and also raising the question of maintainability of the writ petition, on account of the existence of an alternate remedy of appeal before the State Commission.

6. I have heard Sri. Arjun Raghavan, the learned counsel appearing for the petitioner and Sri. Thareeq Anver K., the learned counsel appearing for the respondent.

7. Since the respondent has raised the question of maintainability of the writ petition, the same will have to be considered first. The learned counsel for the respondent raised this contention mainly because, the Consumer Protection Act, 2019 provides for a statutory remedy of appeal, before the State Consumer



Disputes Redressal Commission and according to the respondent, it is for the petitioner to invoke the said remedy, instead of pursuing the writ petition. On the other hand, the learned counsel for the petitioner contends that, the issue involved in the writ petition is relating to lack of jurisdiction of the District Commission, owing to the fact that, the respondent being an ex-employee of the petitioner, would not come within the definition of 'Consumer' as defined under the Consumer Protection Act, 2019. Thus, according to the petitioner, since the respondent is not a consumer as defined under the Act, the District Commission does not have any jurisdiction to entertain the complaint and therefore any decision taken by the said Commission would be a nullity; therefore, the same can be challenged in a writ petition.

8. After carefully going through the nature of the dispute involved, admitted employer-employee relationship between the petitioner and the respondent, I find merit in the submission made by the learned counsel for the petitioner in this regard. The learned counsel for the petitioner placed reliance upon M/s **Godrej Sara Lee Limited v. Excise and Taxation Officer-cum-Assessing Authority and Others [ILR 2023(2) Ker.1]** rendered by the Hon'ble Supreme Court, where, the distinction between the



'entertainability' and 'maintainability' of a writ petition was explained. Thereafter, it was held that, where the controversy is purely a legal one and it does not involve the disputed questions of fact, but only questions of law, then it should be decided by the High Court on merits, instead of dismissing the writ petition on the ground of alternate remedy. The Hon'ble Supreme Court while making the said observations, relied on the decision rendered by the Hon'ble Court in **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Others [1998(8) SCC 1]** as well. Similarly, in **KSEB Ltd and Another v. K.S.C.D.R.C and Others [2018(3) KLT 953]**, a Division Bench of this Court considered this question and it was observed that, when the order under challenge is *per se* without jurisdiction, the same can be challenged, by filing a writ petition under Art.226 of the Constitution of India. It was further observed therein that, the jurisdiction of the High Court in entertaining the writ petition due to existence of alternate remedy will not be affected, in a case where, the authority against whom the writ is filed, is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation. This principle has been recognised by the Apex Court in a catena of decisions including **Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad [AIR 1969 SC**



556], Radha Krishan Industries v. State of H.P., [(2021) 6 SCC 771], Rajasthan SEB v. Union of India, [(2008) 5 SCC 632] , Kuntesh Gupta v. Hindu Kanya Mahavidyalaya, [(1987) 4 SCC 525] and Seth Chand Ratan v. Pandit Durga Prasad, [(2003) 5 SCC 399], wherein it was observed ;

"13.It has been settled by a long catena of decisions that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the court may in exceptional cases issue a discretionary writ of certiorari. Where there is complete lack of jurisdiction for the officer or authority or tribunal to take action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then notwithstanding the existence of an alternative remedy, the High Court can exercise its jurisdiction to grant relief."

In this case, the specific question that arises for consideration is relating to the jurisdiction of the District Commission, in view of the fact that, the respondent/complainant, according to the petitioner is not a 'Consumer' defined under the Act. There is no factual dispute in this case regarding the relationship between the parties, as it is admittedly that of employer-employee. Further, the claim that has arisen, pertains to the entitlement to get the gratuity, which is a statutory entitlement as per payment of Gratuity Act, that is



connected with the service conditions of the respondent, being an employee of the petitioner. Thus, there are no factual disputes involved in this writ petition and the question to be decided is a pure question of law, touching upon the jurisdiction of the District Commission. When a question of fundamental character pristinely legal, requiring determination, the High court under Article 226 should have dealt instead of leaving the matter to statutory appeal as held in **Union of India v. State of Haryana, [(2000) 10 SCC 482]**. Thus, I hold that, in the light of the principles laid down by the Hon'ble Supreme Court, as well as this Court, this writ petition is entertainable.

9. Now, when it comes to the question of jurisdiction of the District Commission, as mentioned above, it is because of the fact that, according to the petitioner, the respondent is not a consumer as defined under section 2(7) of the Consumer Protection Act, 2019. The said provision reads as follows:

*"Section 2(7):- "consumer" means any person who-
(i) buys any goods for a consideration which has been paid or promised or partly paid promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*



(ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Explanation.- For the purposes of this clause.-

(a) the expression "commercial purpose" does not include use by a person of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

(b) the expressions "buys any goods" and "hires or avails any services" includes offline or online transactions through electronic means or by teleshopping or direct selling or multi-level marketing."

10. The respondent is claiming the status of a consumer who availed the services of the petitioner. The expression 'service' is defined in section 2(42) which reads as follows:

Section 2(42):- "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

11. Going by sub clause (ii) of section 2(7), it can be seen that, in order to become a Consumer, such person must have hired or availed any service for a consideration.

12. Section 2(42) where the term "service" is defined, it is



clearly specified that, it does not include rendering of service free of charge or under a contract of service. A careful reading of the aforesaid provisions would clearly indicate that, what is envisaged therein, is a relationship between a person availing a service for consideration, and the party from whom such service was availed. The consideration is a relevant factor that determines the status of a person, who avails the services of the service provider. In **Indian Medical Association v. V.P. Shantha and Others [1995(6) SCC 651]**, the Apex Court while interpreting 'service' under Section 2(1)(o) of the Consumer Protection Act, 1986, observed;

"13. The definition of 'service' in Section 2(1)(o) of the Act can be split up into three parts — the main part, the inclusionary part and the exclusionary part. The main part is explanatory in nature and defines service to mean service of any description which is made available to the potential users. The inclusionary part expressly includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information. The exclusionary part excludes rendering of any service free of charge or under a contract of personal service."

13. In this case, the important aspect noticed is that, there is no dispute that, the respondent was an employee of the petitioner and therefore the nature of relationship between them is that of an employer-employee relationship, which is distinct from a person availing the services of another, who is a service provider. More



importantly, in a case of employer-employee, the service is being rendered by the employee to the employer in return of a specified remuneration in the form of salary and other allowances, and not vice versa. Therefore, as far as an employer is concerned, he cannot be treated as a service provider and the employee cannot be treated as a person who availed the services from the employer.

14. In fact, the position of law in this regard is well settled as per the decision rendered by the Hon'ble Supreme Court in **Jagmittar Sain Bhagat and Others v. Director, Health Services, Haryana and Others [(2013)10 SCC 136]**, where the claim of a Government employee, as a consumer under the Consumer Protection Act, 1986 was rejected. In the said decision, after referring to various judicial precedents in this regard, it was observed that, by no stretch of imagination can a Government servant raise any dispute regarding service conditions or payment of Gratuity or GPF or any of his retiral benefits before any forum under Consumer Protection Act. It was held that the Government servant does not fall under the definition of a 'consumer' as defined under section 2(1)(d)(ii) of the Consumer Protection Act, 1986. The same view was reiterated by the Hon'ble Supreme Court in **Ministry of Water Resources and Others v. Shreepat Rao Kamde [(2023) 13 SCC 819]**. Of course



it is true that, those decisions were rendered by the Hon'ble Supreme Court with reference to the definition of 'Consumer' as per the provisions of the Consumer Protection Act, 1986 whereas, in this case we are concerned with the definition of the 'consumer' in the Act, 2019. However, a careful reading of the relevant provisions of the both the enactments, it can be seen that, the basic criteria with regard to the availing of services remains the same and hence those observations are applicable to the present enactment as well. Of course, the learned counsel for the respondent brought to the attention of this Court to the observations made by this Court in **Kerala State Co-operative Employees' Pension Board v. CDR Forum [2004(1)KLT 111]** and the order passed by the State Consumer Disputes Redressal Commission, Thiruvananthapuram, in First appeal No.A/229/2018 (**Jayarajan N.K. v. Koduvally Housing Co-operative Society**). In the above order of the State Commission, after referring to the judgment rendered in **Jagmittar Sain Bhagat's case (supra)**, it was held that, the complaint could be entertained in a service dispute relating to the retiral benefits of an employee of a Co-operative Society. However, on carefully going through the observations contained therein, it can be seen that, the State Commission relied on the observations made by the Hon'ble



Supreme Court in **Chairman-cum-Managing Director, ONGC Ltd. and Others v. Consumer Education Research Society and Others**[AIR 2020 SC 87]. In addition to that, the observations made by this Court in Kerala **State Co-operative Employees Pension Board's case (supra)** was also relied on.

15. On going through the observations made by the Hon'ble Supreme Court in **ONGC's** case (supra), it can be seen that, the complainant therein was found to be a consumer, on the reason that such employee had got registered under a scheme viz., Post Retirement and Death in Service Benefits Scheme, 1991, where contributions will have to be made by the employees. The complaint happened to be filed, when the claim under the said scheme was not settled in time. Thus, the complainant therein was availing the services under a scheme providing retirement benefits, by collecting contribution towards it. Therefore, services of managing those contributions were being provided, to the persons in service, and it was not a claim like the one relating to gratuity, which is a statutory benefit of the employee without any contribution. In the matter of service benefits relating to gratuity, the question of managing the funds of the employees, as is done in the case of managing the contributions towards pension fund, does not arise. Therefore, the



observation in the said decision cannot be made applicable to this case.

16. Similarly, in **Kerala State Co-operative Employees Pension Board's case (supra)** the question considered was whether, the Kerala State Co-operative Employees Pension Board, created by the Government for administering the Pension scheme, could be treated as a Consumer. There also, the employees were making the contribution to the Board and the Board was rendering the services to the employees by managing the funds obtained by way of contributions. Thus, the relationship between the parties in the above decisions, when it is considered from the point of view of the specific services rendered therein, cannot be treated as that of a mere employer-employee. Thus, there is a clear distinction on facts, under which the conclusions were made in ONGC's case and Kerala State Co-operative Employees Pension Board's case (supra). In such circumstances, I am of the view that those decisions cannot be made applicable in the facts and circumstances of this case, as the claim in this case is pure a statutory claim under the provisions of the Payment of Gratuity Act, which is without any contribution by the employee but it forms part of the service conditions of such employee.



17. In this regard, the observations made by the National Consumer Redressal Commission in **ICICI Bank Ltd. v. Digamber Vaman Gurjar and Another [Revision Petition No.28 of 2020]**, are relevant. In the said order, the National Commission took note of difference between "*contract of service*" and "*contract for service*". It was observed that, when the "*contract for service*" denotes the relationship between Consumer and Service Provider, the "*contract of service*" indicates the employer-employee service. Decisions rendered by the Hon'ble Supreme Court in **Kishorelal v. Chairman Employees State Insurance Corporation [2007(4) SCC 579]** and **Indian Medical Association v. V.P. Shantha and Others [1995(6) SCC 651]** were also relied on in the said decision. The Hon'ble Apex in **Indian Medical Assn. v. V.P. Shantha, (supra)**, elaborately considered the difference between 'contract of service' and 'contract for service' , as follows;

"40. *Shri Salve has urged that the relationship between a medical practitioner and the patient is of trust and confidence and, therefore, it is in the nature of a contract of personal service and the service rendered by the medical practitioner to the patient is not 'service' under Section 2(1)(o) of the Act. This contention of Shri Salve ignores the well-recognised distinction between a "contract of service" and a "contract for services". (See: Halsbury's Laws of England, 4th Edn., Vol. 16, para 501; Dharangadhara Chemical Works Ltd. v. State of Saurashtra [1957 SCR 152 : AIR 1957 SC 264 : (1957) 1 LLJ 477] at p. 157.) A "contract for services" implies a contract whereby one party undertakes to render services e.g. professional or technical services, to or for another in the*



performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. (See: Oxford Companion to Law, p. 1134.) A "contract of service" implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. (See: Stroud's Judicial Dictionary, 5th Edn., p. 540; Simmons v. Heath Laundry Co. [(1910) 1 KB 543 : 79 LJ KB 395] ; and Dharangadhara Chemical Works [1957 SCR 152 : AIR 1957 SC 264 : (1957) 1 LLJ 477] at p. 159.) We entertain no doubt that Parliamentary draftsman was aware of this well-accepted distinction between "contract of service" and "contract for services" and has deliberately chosen the expression "contract of service" instead of the expression "contract for services", in the exclusionary part of the definition of 'service' in Section 2(1)(o). The reason being that an employer cannot be regarded as a consumer in respect of the services rendered by his employee in pursuance of a contract of employment. By affixing the adjective 'personal' to the word 'service', the nature of the contracts which are excluded is not altered. The said adjective only emphasises that what is sought to be excluded is personal service only. The expression "contract of personal service" in the exclusionary part of Section 2(1)(o) must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service from the ambit of the expression 'service'."

18. Thus, I have no doubt in my mind that, the jurisdiction exercised by the District Commission in this case, was without any jurisdiction, as the respondent herein, under no stretch of imagination, would come within the definition of "consumer" as per section 2(7) of the Consumer Protection Act, 2019. Even though various other contentions have been raised with regard to the disqualification of the respondent in raising the claim on the ground of limitation, I am not entering into any finding with respect to the same, since I found that the decision taken by the District



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Commission was without any authority.

In the light of the above, this writ petition is allowed by quashing Ext.P12, without prejudice to the other rights and remedies available to the respondent herein.

Sd/-

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**ZIYAD RAHMAN A.A.
JUDGE**

APPENDIX OF WP(C) NO. 45358 OF 2024

PETITIONER EXHIBITS

Exhibit-P1	A TRUE COPY OF THE PRINTOUT OF THE REMITTANCE DETAILS DATED 19-11-2015
Exhibit-P2	A TRUE COPY OF THE DISCHARGE RECEIPT DATED 09-07-2016
Exhibit-P3	A TRUE COPY OF THE INTIMATION DATED 05-07-2016 ISSUED FROM LIFE INSURANCE CORPORATION OF INDIA
Exhibit-P4	A TRUE COPY OF THE REPRESENTATION DATED 17-03-2022 FILED BY RESPONDENT BEFORE THE PETITIONER
Exhibit-P5	A TRUE COPY OF THE COMPLAINT DATED 27-06-2022 (CC 259 OF 2022) FILED BY RESPONDENT BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION MALAPPURAM
Exhibit-P6	A TRUE COPY OF THE VERSION DATED 12-09-2022 FILED BY THE PETITIONER IN CC 259 OF 2022
Exhibit-P7	A TRUE COPY OF THE PETITION (IA 789 OF 2022 IN CC 259 OF 2022) DATED 28-11-2022
Exhibit-P8	A TRUE COPY OF THE COUNTER AFFIDAVIT DATED 25-01-2023 FILED BY THE RESPONDENT
Exhibit-P9	A TRUE COPY OF THE CHIEF AFFIDAVIT DATED 28-11-2022 FILED BY THE RESPONDENT
Exhibit-P10	A TRUE COPY OF THE AFFIDAVIT FILED BY THE PETITIONER IN CC NO.259 OF 2022
Exhibit-P11	A TRUE COPY OF THE NOTE FILED BY PETITIONER IN CC 259 OF 2022
Exhibit-P12	A TRUE COPY OF THE ORDER DATED 24-10-2024 IN CC NO.259 OF 2022
Exhibit-P13	A TRUE COPY OF THE ORDER DATED 20-02-2024 IN IA 52 OF 2023 IN CC 259 OF 2022 OF DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION, MALAPPURAM
Exhibit P14	A TRUE COPY OF ORDER DATED 20-07-2022 IN REVISION PETITION NO.71 OF 2013, ISSUED BY THE NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI