

**IN THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.745 of 2023

Sri Ratan Kumar Das,
son of late Sunil Chandra Das, resident of
village- Hall Chowmuhani, P.O. Belonia,
Belonia, South Tripura, PIN-799155

..... **Petitioner(s)**

- Versus -

1. **The State of Tripura,**
to be represented by Commissioner &
Secretary, Rural Development Department,
Govt. of Tripura, New Secretariat Complex,
Kunjaban, Agartala, West Tripura, PIN
799010
2. **The Project Director,**
District Rural Development Agency,
Kailashahar, Tripura (North)
3. **The Project Director (ADM & Collector),**
District Rural Development Agency, Gomati
District, Udaipur
4. **The Chief Executive Officer (DM & Collector),**
District Rural Development Agency, Gomati
District, Udaipur

..... **Respondent(s)**

For the Petitioner (s) : Mr. P. Roy Barman, Sr. Adv.
Ms. S. Debbarman, Adv.

For the Respondent (s) : Mr. M. Debbarman, Addl. GA

Date of hearing and delivery : **03.07.2024**
of Judgment & Order

Whether fit for reporting :

YES	NO
√	

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (ORAL)

This writ petition has been filed by the petitioner with the following reliefs:

- (i) **Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature**

shall not be issued whereby directing the Respondents to make the full and final payment of Gratuity with interest @ 9% per annum to the Petitioner w.e.f. the date on which gratuity became payable till date of payment after adjusting lump sum amount of Rs.10,00,000/- already paid.

(ii) Issue Rule upon the Respondents to show cause as to why writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to allow the benefit of revised pay scale to the Petitioner as per Tripura State Pay Matrix-2018.

(iii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to recalculate the initial pay of the Petitioner as per Tripura State Pay Matrix-2018 and re-determination of gratuity and leave encashment benefit.

(iv) Issue Rule upon the Respondents to show cause as to why writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to release the contributions made by the Petitioner on account of GSLI.

[2] As stated, the petitioner was appointed as Steno-Typist under the respondents in District Rural Development Agency (DRDA) vide Memorandum dated 16.01.1982 and after rendering service of 37 years, he went on superannuation on 31.12.2019 from the post of PS-IV. His last basic pay was Rs.83,010/-. His first grievance is that at the time of retirement, the Chief Executive Officer, DRDA, Gomati i.e. the D.M. & Collector, Gomati District issued approval and expenditure sanction of Rs.13,69,665/- in his favour on the count of Death-cum-Retirement Gratuity but only Rs.10,00,000/- was credited in his account stating that the said amount was only admissible as per notification of the Finance Department, Government of Tripura dated 11.07.2017, though vide notification dated 29.03.2018 the upper ceiling limit of gratuity was enhanced from Rs.10,00,000/- to Rs.20,00,000/- by the Central Government. According to him, Payment of Gratuity Act, 1972 is applicable in his case.

[3] The second count of grievance of the petitioner is that the Finance Department concurred with the proposal of DRDA towards implementation of revised pay scale in terms of Tripura State Civil Services (Revised Pay) (1st Amendment) Rules, 2018 (for short-Revised Pay - 1st Amendment Rules of 2018) in respect of the staff working under the DRDA subject to the condition that the revision may be considered w.e.f. 01.10.2018 notionally and actual benefit may be given from 01.04.2020 and also the arrear may be paid, if fund is sufficient. As regards the decision on revision of gratuity and leave salary for these categories of employees, the same was decided to be taken at a later date on the basis of the flow of fund. According to the petitioner, such decision of the Finance Department was evident from a letter dated 05.03.2020 (Annexure-10 of the writ petition) of Director (Projects), DRDA, addressed to the Chief Executive Officers (D.M. & Collector) of all Districts, but the benefit of such pay matrix was denied to the petitioner though he retired on 31.12.2019 and refusal of such benefits was communicated to him vide letter dated 25.08.2021 (Annexure-12 of the writ petition) of Director (Projects), SLMC, RD, Government of Tripura on the ground that as he had retired on 31.12.2019, he was not entitled to any such financial benefit. According to the petitioner, he was entitled to both gratuity and leave salary in terms of said Revised Pay - 1st Amendment Rules of 2018.

[4] The third count of grievance of the petitioner is that while in service, he contributed Rs.100/- per month under the GSLI Scheme

but on his superannuation, such benefit of the GSLI Scheme was not provided to him.

[5] The respondents in their counter affidavit took the defence that the petitioner was not eligible for revision of pay as per Revised Pay - 1st Amendment Rules of 2018 in as much as the direction of the Finance Department was to calculate the benefit notionally from 01.10.2018 and the actual benefit was to be given from 01.04.2020 subject to availability of fund and before the said date, the petitioner went on superannuation. According to them, the amount of gratuity was paid to the petitioner within 30 days from the date of his retirement as per Tripura Civil Services ROP, 2018. Regarding the GSLI amount, they stated that a letter in this regard was sent to the Branch Manager (P & GS), LIC, Silchar Divisional Office, Hailakandi Road, Silchar on 02.12.2020 (Annexure-D of the counter affidavit).

[6] Ms. S. Debbarman, learned counsel led by learned senior counsel, Mr. P. Roy Barman, appearing for the petitioner referred the above said letter dated 05.03.2020 (Annexure-10 of the writ petition) of the Director (Projects) and submitted that as per the said letter itself, the petitioner was entitled to the benefits under said Revised Pay-1st Amendment Rules of 2018 which was illegally denied to the petitioner. To substantiate the claims, Ms. Debbarman, learned counsel further referred another notification dated 06.11.2018 (Annexure-13 of the writ petition) of the Finance Department containing Tripura State Civil Services (Revised Pay) (1st Amendment)

Rules, 2018 whereby old Rule 15 was substituted with the following words:

"Notwithstanding anything contained elsewhere in these Rules, or in any other Rules for the time being in force, the benefit of revision of pay for the month of October, 2018 payable in November 2018 and onwards shall be provided in cash.

The Government employees, who had died/retired/superannuated on or after the 1st day of October, 2018 and before publication of these Rules in the Official Gazette, shall be paid arrear pay and allowances for the period from the 1st day of October, 2018 upto the date of his death/retirement/superannuation in cash."

[7] She also referred another notification dated 07.11.2014 of the DRDA (Annexure-6 of the writ petition) containing the District Rural Development Agency Employees Death cum Retirement Gratuity and Leave Encashment Regulations of Tripura, 2014 wherein provision for Encashment of Leave and Death-cum-Retirement Gratuity were provided in the following terms:

***Encashment of Leave:* Employees of the Agency shall be entitled to payment of Cash equivalent of leave salary, in case of retirement, quitting of service, death in service or invalidation from service in accordance with the relevant provisions of Tripura State Civil Services (Leave) Rules, 1986 and the relevant orders issued from time to time, subject to availability of fund under Direction and Administration of DRDA on 90:10 sharing pattern between the Government of India and the State Government.**

***Death-cum-Retirement Gratuity:* Employees of the Agency shall be entitled to payment of Death-cum-Retirement Gratuity in accordance with the relevant provisions of Central Civil Services (Pension) Rules, 1972 as adopted in the State, subject to availability of fund under Direction and Administration of DRDA on 90:10 sharing pattern between Government of India and the State Government.**

According to learned counsel, gratuity should be paid taking into consideration the upper ceiling limit as determined by Central Government in terms of Payment of Gratuity Act, 1972 and not by above said provision.

[8] Ms. Debbarman, learned counsel relied on some decisions of this Court in the matter of payment of gratuity which will be discussed in the later part of the judgment.

[9] Mr. M. Debbarman, learned Addl. GA appearing for the State-respondents argued that when separate rules were framed by the State governing the gratuity of employees of DRDA, the petitioner was not entitled to claim the gratuity in terms of Payment of Gratuity Act, 1972. Ld. Counsel further argued that the Central Government ought to have been made party in this case as sharing of fund in this regard between the Union of India and the State Government is 90:10. Mr. Debbarman, learned Addl. GA also submitted that when there is a separate provision for Leave Encashment for the employees of DRDA, the petitioner would be guided by the same and all the dues were accordingly cleared up by the department in favour of the petitioner in due time without any delay.

[10] So far the three counts of claims of the petitioner are concerned, the same are being discussed one after another.

(i) Claim regarding applicability of Revised Pay 1st Amendment Rules of 2018 and computation of leave encashment and gratuity thereupon:

[11] Tripura State Revised Pay Rules, 2017 was brought into force w.e.f. 01.04.2017 and the said First Amendment thereof was made effective from 01.10.2018. It is evident from the letter dated 05.03.2020 [Annexure-10 of the writ petition] of the Director (Projects), State Level Monitoring Cell of SGSY, Rural Development

Department that the Finance Department concurred with the proposal of the department towards implementation of revised pay scale in terms of said Revised Pay - 1st Amendment Rules of 2018 in respect of staff and workers under DRDA subject to the condition that revision may be considered w.e.f. 01.10.2018 notionally and actual benefits may be given from 01.04.2020. The arrears may be paid if fund is found sufficient. Therefore, there is no doubt that the employees of the DRDA were entitled to get revised pay scale in terms of said Revised Pay-1st Amendment Rules of 2018. Only a condition was imposed that the actual benefit would be paid from 01.04.2020 but fixation of pay should notionally be done w.e.f. 01.10.2018. The said decision does not cover the situation where an employee goes on superannuation before 01.04.2020. Such imposition of condition of giving actual financial benefits from 01.04.2020 on its plain reading creates the impression that it was meant for the employee who are in service on said date 01.04.2020. But said decision of Finance Department nowhere creates any bar in computing the post retirement benefits of an employee based on said Revised Pay-1st Amendment Rules of 2018, who went on retirement in between the period 01.10.2018 to 01.04.2020. At best, fixation of pay of the concerned employee may be done w.e.f. 01.10.2018 notionally till the date of his retirement based on which his post retirement benefits may be computed and paid to him. Therefore, the decision of the respondents for not giving the benefits of said 1st Amendment Rules of 2018 to the petitioner on his retirement was arbitrary and illegal. His pay could be fixed notionally w.e.f. 01.10.2018 and his post

retirement benefits, as admissible, ought to have been provided as per the said Amendment Rules of 2018 with effect from the date of his retirement. The letter dated 11.12.2020 [Annexure-A of the counter affidavit] of Project Director, DRDA, Gomati District, Udaipur shows that the Gratuity and the Leave Encashment benefits were released in favour of the petitioner as per Tripura Pay Matrix, 2017, which was, therefore, not in accordance with the said rules.

(ii) Claim regarding applicability of revised ceiling limit as prescribed by the Central Government in terms of Payment of Gratuity Act, 1972:

[12] Ms. S. Debbarman, learned counsel during her submissions referred two decisions of this Court in case of **Sri Jagadish Ch. Deb vs. State of Tripura & Ors.** [first judgment and order dated 19.02.2019 delivered in W.P.(C) No.234 of 2014 and subsequent order dated 10.05.2022 delivered in W.P.(C) No.288 of 2021] but both the decisions are on different perspectives and therefore, are not of any assistance to the petitioner. However, learned counsel also referred to another decision of this Court in the case of **Sri Samir Kumar Ghosh vs. the State of Tripura & Ors.** [Judgment and order dated 29.05.2020 delivered in W.P.(C) No.1091 of 2017] wherein the petitioner was an employee of Agartala Municipal Corporation whose gratuity was fixed by the respondents as per CCS Pension Rules, 1972 and not in terms of Payment of Gratuity Act, 1972. This Court finally held that the employees of Municipal Corporation will be guided by Payment of Gratuity Act, 1972 and directed that Agartala Municipal Corporation should calculate the gratuity in terms of Section 4(2) of

the Act payable to the petitioner of that case by taking into account his basic salary and dearness allowance.

[13] In **Sri Bhupati Debnath vs. the State of Tripura** [judgment and order dated 13.02.2020 delivered in W.P.(C) No.1054 of 2019], as relied on by Ms. Debbarman, learned counsel, the petitioner was a retired employee of Tripura Handloom and Handicrafts Development Corporation Ltd., who was not paid the Gratuity amount on his retirement taking into consideration the revised ceiling limit of Rs.20,00,000/- under the said Act of 1972. In Para-11 of the said decision, this Court has held as under:

11. This revised ceiling thus would apply to all establishments irrespective of whether they are controlled or governed by the State or the Central Government as the appropriate Government. The stand of the respondents, therefore, that unless and until such revised ceiling of payment of gratuity is adopted by the State Government, the employees of the said corporation cannot claim benefit of such revised limit cannot be accepted. Revised ceiling limit of ₹20,00,000 (rupees twenty lakhs) would be applicable to the petitioner.

[14] Ms. Debbarman, learned counsel also relied on another decision of this Court in **Lal Zakim Rokhum vs. Tripura Road Transport Corporation & Ors.** [Judgment and order dated 20.02.2020 delivered in W.P.(C) No.1209 of 2019] wherein reference was also made to the above said observation made in **Bhupati Debnath (supra)**. In this case the petitioner was a retired employee of Tripura Road Transport Corporation and he claimed payment of gratuity in terms of the enhanced ceiling limit of Rs.20,00,000/- as was issued vide notification dated 29.03.2018 of Government of India.

Finally in said case also enhanced ceiling limit of gratuity of Rs.20,00,000/- was applied.

[15] In **Agartala Municipal Corporation & Anr. vs. Ratna Roy and others** [Judgment and order dated 19.02.2024 delivered in W.A. No.161 of 2022 decided analogously with some other appeals] by the Division Bench of this Court wherein I had the occasion to be a member of the said Bench also similarly directed the Agartala Municipal Corporation-respondents to calculate the admissible gratuity of the appellants therein who retired after 29.03.2018 taking into consideration the revised ceiling limit of Rs.20,00,000/- in terms of the provision of the said Act of 1972. Recently this Court in the case of **Smt. Bina Rani Paul & Ors. vs. State of Tripura and Ors.** [Judgment and order dated 09.05.2024 delivered in W.P.(C) No.624 of 2024] held that Payment of Gratuity Act, 1972 was also applicable in case of Anganwadi Workers and Anganwadi Helpers working in Tripura.

[16] The DRDA is an agency established for effective implementation of anti poverty programmes in rural areas at the district level and to support and facilitate the development processes and also to coordinate with all the agencies involved therein for such purposes. It is a principal organ at district level to oversee the implementation of different anti poverty programmes of the Central Government. DRDA works under the control of the State Government. As per definition of 'establishment' as provided in Section 2(e) of Tripura Scheduled Castes and Scheduled Tribes Reservation Act,

1991, 'establishment' means any office **under the State**, a local or statutory authority constituted under the constitution of India or any other law for the time being in force or a Corporation in which not less than fifty one percent of the paid-up share capital is held by the State Government and includes Universities and Colleges affiliated to the Universities, Primary and Secondary Schools and also other educational institutions which are owned or aided by the State Government and also includes an **establishment in Public Sector**. By an amendment of 2005, the words "any office of the State Government" was substituted by the words "any office under the State" giving wider definition of the same and bringing all the establishments under the State within the purview of said Act though all such establishments may not be the office of the State Government. As per Section 2(f) of said Act, any industry, trade, business or occupation owned, controlled or managed by the State is treated as 'establishment in public sector'. Ld. Addl. G.A., on query by the Court, also informed that Tripura Schedule Castes and Schedule Tribes Reservation Act, 1991 is applicable in DRDA and also placed some documents in the record in this regard.

[17] In the case of **Maniben Maganbhai Bhariya vs. District Development Officer Dahod and others, 2022 SCC OnLine SC 507** also, a very wider meaning of 'establishment' was given by Hon'ble Supreme Court to include Government offices and establishment within such definition. Therefore, there is no doubt that DRDA is also an establishment within the meaning of Section 1(3)(b) of the Act of 1972. Section 5 of the said Act of 1972 authorises the

appropriate government to exempt any establishment to which the Act applies from operation of provision of the said Act, if in the opinion of the appropriate government, the employee in such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act of 1972.

[18] The State Government under Article 309 of the Constitution of India has framed a Rule, called District Rural Development Agency Employees Death cum Retirement Gratuity and Leave Encashment Regulations of Tripura, 2014 and as indicated earlier that the provisions were made for Encashment of Leave and Death-cum-Retirement Gratuity of the employees of the DRDA in the said Rules. It was notified on 07.11.2014 and was made applicable to the regular employees of DRDA who were in service on or after 31.01.2011. The said rules prescribes that Death-cum-Retirement Gratuity would be paid to the employees of DRDA in accordance with the relevant provisions of Central Civil Services (Pension) Rules, 1972 as adopted in the State subject to availability of fund under direction and administration of DRDA on 90:10 sharing pattern between the Government of India and the State Government. The said Rules of 1972 as adopted in the State of Tripura provides the upper ceiling limit of Gratuity to the extent of Rs.10,00,000/- whereas already vide notification bearing No. S.O 1420(E) dated 29.03.2018, the Government of India has made the revised ceiling limit of gratuity to the extent of Rs.20,00,000/-. Therefore, in view of provisions of Section 5 of the said Act of 1972 as indicated above less favourable

amount of gratuity cannot be paid to an employee where the provision of Act of 1972 is applicable.

[19] In view of the above, it is held that the petitioner is entitled to get the amount of gratuity taking into consideration the revised ceiling limit of Rs.20,00,000/- as was notified by the Government of India as indicated above.

(iii) Claim regarding GSLI:

[20] It appears from the documents submitted under Annexure-D of the counter affidavit of the respondents that the petitioner initially contributed Rs.60/- per month and thereafter, Rs.100/- per month under the GSLI Scheme and in this regard, on 02.12.2020, a letter was written by the Project Director, DRDA, Gomati District to the Branch Manager LIC, Silchar Division, Silchar for making necessary payment to the petitioner under said scheme. The respondents No.3 & 4 will take up the matter with LIC to ensure that the said benefit is provided to the petitioner immediately, if not already paid.

[21] In the result, the writ petition is allowed and disposed of in the following terms:

The respondents shall re-determine the post retirement benefits of the petitioner i.e the Leave Encashment and Gratuity after fixation of his basic pay in terms of Tripura State Civil Services (Revised Pay) (1st Amendment) Rules, 2018 in the light of the

discussions made in Para-11 above. The Gratuity payable to the petitioner will be computed after taking into consideration the revised ceiling limit of Rs.20,00,000/- as notified by the Government of India vide notification dated 29.03.2018 and payment of arrears will be made accordingly. The respondents will also pay interest @7% per annum on the rest amount of Leave Encashment and Gratuity, computing from the date after the expiry of one month of the date of retirement of the petitioner till payment is made.

The respondents will also ensure payment of benefits under the GSLI Scheme to the petitioner as indicated above accordingly at the earliest after taking up the matter with LICI, if the same is not already paid. All the above said exercises should be done within 4[four] months from the receipt of the copy of this Judgment and order.

Pending application(s), if any, also stand disposed of.

JUDGE