

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.188/2021

1. Tripura Jute Mills Officers Association, represented by Shri Arun Kumar Gope, Secretary of the Association, Jute Mills Complex, Hapania, P.O. Agartala ONGC, Agartala.
2. Shri Biswadatta Debbarma, Junior Supervisor, Tripura Jute Mills Ltd., Hapania, Agartala, West Tripura.
3. Shri Bishutosh Majumder, Junior Supervisor, Tripura Jute Mills Ltd., Hapania, P.O. Agartala ONGC, Agartala.
4. Shri Bhanu Lodh, Commercial Manager (Retd) Tripura Jute Mills Ltd., Qr. No.9, Block-B, Type-III, PWD Qrs. Complex, Agartala.

..... Petitioner-Appellant(s)

V E R S U S

1. The State of Tripura, represented by the Chief Secretary to the Government of Tripura, New Secretariat, P.O. New Capital Complex, Agartala, West Tripura.
2. Tripura Jute Mills Limited (A Government of Tripura Undertaking), represented by the Managing Director, Hapania, P.O.-ONGC, West Tripura.
3. The Regional Provident Fund Commissioner Tripura Region, Bholagiri Ashram, Airport Road, Agartala.

.....Respondent(s)

For Appellant(s)	: Ms. R. Purkayastha, Advocate.
For Respondent(s)	: Mr. Debalay Bhattacharya, G.A., Mr. Biswanath Majumder, CGC, Mr. Dipankar Sarma, Addl. G.A., Mr. Soumyadeep Saha, Advocate.

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment : **19th January, 2023.**

JUDGMENT & ORDER (ORAL)

Heard Ms. R. Purkayastha, learned counsel appearing for the appellants. Also heard Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondent No.1-State, Mr. Debalay Bhattacharya, learned Government Advocate appearing for the respondent No.2-Tripura Jute Mills Limited and Mr. Biswanath Majumder, learned CGC appearing for the respondent No.3-Regional Provident Fund Commissioner.

2. This writ appeal is directed against the judgment and order dated 09.04.2021 passed by the learned Single Judge in WP(C) No.1369 of 2019 whereby the learned Single Judge did not find the petitioners to get interest on delayed provident fund contributions at the prevalent rates and consequently, dismissed the writ petition.

3. Brief facts of the case are that the petitioner is an association of the officers of Tripura Jute Mills which is a State owned corporation. In the year 1996 all the State corporations and PSU employees were granted revised pay scales but the officers and employees of Tripura Jute Mills were deprived of this benefit. Thereafter, they had filed a writ petition before the Gauhati High Court which was dismissed by the learned Single Judge.

Aggrieved thereby, the petitioners had filed Writ Appeal No.74/2003 which was allowed by the Division Bench by a judgment dated 08.04.2011. This judgment was challenged by the authorities before the Supreme Court. Supreme Court disposed of the appeal by an order dated 25.10.2016 confirming the judgment of the Division Bench granting benefit of Fourth Pay Commission recommendations to the officers of the Tripura Jute Mills w.e.f. 01.01.1996. Such amount would be paid to the members of the association only with simple interest @ 6% per annum from the date of the judgment of the Division Bench i.e. 08.04.2011 till actual payment within four months. The grievance of the petitioner now is that since this exercise of pay revision as well as fixation was undertaken after the judgment of the Supreme Court which was rendered in October, 2016, they must be paid interest from the past period as because if such contributions to their provident fund accounts had been made timely, they would have earned interest therefrom. But the interest on the contributions of the Provident Fund @ 12% w.e.f. 01.01.1996 had not been paid by the employer to the petitioners. Being dissatisfied, they have approached this Court by filing writ petition being WP(C) No.1369 of 2019 but the learned Single Judge vide impugned judgment and order dated 09.04.2021 dismissed the said petition. Aggrieved thereby, the petitioners have filed this writ appeal. Hence, this case.

4. Appellants have prayed for the following reliefs:

- "(i) Admit this Writ Appeal;
- (ii) Issue notice upon the Respondents;
- (iii) Call for the records; and
- (iv) After hearing the parties would be further pleased enough to quash or set aside the impugned judgement and order dated 09.04.2021 passed by the Hon'ble Single Bench of this Hon'ble Court in W.P.(C) 1369 of 2019 whereby the Hon'ble Single Bench dismissed the writ petition of the petitioner-appellants and thereby direct the Respondent Nos.1 and 2 to deposit the interest on the monthly rate of P.F. contributions at the rates relevant at different period since 01.01.1996 with the Respondent No.3 in respect of all the members of the Association and credit the same to the accounts of the individual petitioner employees for fair ends of justice, otherwise the appellants will be seriously prejudiced and cause irreparable loss and injuries.

AND/OR

To pass any other order/orders, relief/relives as your Lordship may deem fit and proper with regards to the facts and circumstances of this appeal."

5. Ms. R. Purkayastha, learned counsel appearing for the appellants, contends that the learned Single Judge dismissed the writ petition not on merit but on the ground that all rights and liabilities between the members of the petitioner-association and the employer with respect to grant of revised pay scale were before the High Court and thereafter before the

Apex Court which had allowed arrears as per revised scale which would carry interest for a limited period. Learned counsel also contends that the interest on the arrear of salary and interest on the amount of contribution to provident fund due from the employer are two separate issues and the later one, i.e. interest on PF contribution is regulated and guided by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act, for short) and as such, it is a statutory interest which cannot be waived. Learned counsel refers to Section 7Q of the EPF Act and contends that from the provisions of the said Act it is clear that the employers are under legal obligation to deposit 12% interest upon the amount due to be paid to the employees w.e.f. 01.01.1996 as per decision of the Apex Court. But payment of such amount had been delayed due to fault on the part of the employer and the petitioners are legally entitled to such interest of which they cannot be deprived. Accordingly, she prays for setting aside the impugned judgment and order dated 09.04.2021 passed by the learned Single Judge in WP(C) No.1369 of 2019.

6. On the other hand, Mr. Debalay Bhattacharya, learned G.A. appearing for the respondent-Jute Mills, vehemently objected the submission of the learned counsel for the appellants contending that the appeal filed by the appellant-petitioners is completely barred by the principle of constructive

res judicata because in earlier round of litigations they claimed all benefits along with interest and after hearing the parties learned Single Judge has allowed the prayer which has been affirmed by the Division Bench as well as by the Apex Court. Hence, he prays for dismissal of the writ appeal.

Mr. Biswanath Majumder, learned CGC appearing for the respondent No.3-EPF referring to the communication dated 10.09.2018 issued by the Regional P.F. Commissioner submits that as per decision of the Apex Court that compensation to be paid by the employer for delay in payment of arrear wages, the EPFO is liable to pay interest on contribution of arrear wages from the next month of disbursement of arrear wages and it being the prerogative of the legislature, appellants cannot claim such benefit. He also contends that under Article 141 of the Constitution, office of EPF has no power/capacity to interfere with the order of the Apex Court and to allow interest on arrear contribution due w.e.f. 01.01.1996.

Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondent No.1-State has adopted the arguments advanced by the learned Government Advocate appearing for the respondent-Jute Mills.

7. Having heard the submissions of the rival parties, we are of the considered view that the appellant-petitioners in the earlier round of

litigations had claimed all benefits of arrear along with interest on the contribution of provident fund at the prevalent rates and their prayers were allowed in all the Forums and the respondent authorities accordingly paid over all the benefits. The appellants have not agitated in this appeal that they had never raised the issue of interest in the previous round of litigation. So, now they cannot turn around and claim such benefit in a fresh and independent round of litigation.

8. Accordingly, the writ appeal stands dismissed. The impugned judgment and order dated 09.04.2021 passed by the learned Single Judge in WP(C) No.1369 of 2019 is confirmed.

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

(ARINDAM LODH), J

CHIEF JUSTICE (ACTING)

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