

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.572 of 2023

1. **Sri Ratan Kumar Deb,**
S/o: Lt. Sonatan Deb, R/o: Durgapara,
Hapania, Agartala ONGC, West Tripura,
PIN: 799014
2. **Smt Rama Deb,**
W/o: Ratan Kumar Deb, R/o: Badharghat,
Hapania, West Tripura, PIN: 799014
3. **Sri Sisir Bhattacharjee,**
S/o: Lt. Prabhat Chandra Bhattacharjee
R/o: Ramnagar Road No. 3, P.O-
Ramnagar Agartala, West Tripura,
PIN: 799002
4. **Smt. Tandra Chakraborty,**
W/o: Abhijit Chaudhuri, R/o: A.D Nagar,
raod No. 07, Agartala, West Tripura, PIN:
799003
5. **Sri Sankar Dhanuk,**
S/o: Lt. Nitai Dhanuk, R/o: Indranagar,
Jagatpur near Kabar Stan, Agartala, West
Tripura, PIN: 799001
6. **Sri Kajal Debnath,**
S/o: Lt. Bishambhar Debnath, R/o:
Dhaleswar Road No. 11, Agartala, West
Tripura, PIN: 799007

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

- V e r s u s -

1. **The State of Tripura,**
to be represented by Principal Secretary,
Department of Forest, Govt. of Tripura,
New Secretariat Complex, Kunjaban,
Agartala, West Tripura, PIN 799010
2. **Tripura Forest Development & Plantation Corporation Ltd.**
to be represented by the Managing
Director , TFDPC, Abhoynagar, Agartala,
West Tripura, Pin:799005
3. **The Managing Director,**
Tripura Forest Development & Plantation
Corporation Ltd, Near Old Raj Bhavan, P.O-
Abhoynagar, Agartala, Pin- 799005, West
Tripura

4. **The Executive Director,**
Tripura Forest Development & Plantation
Corporation Ltd, Near Old Raj Bhavan, P.O-
Abhoynagar, Agartala, Pin- 799005, West
Tripura
5. **The Principal Secretary,**
Department of Forest, Govt. of Tripura
6. **The Secretary,**
Department of Finance, Govt. of Tripura,
New Secretariat Building, New Capital
Complex, Agartala, West Tripura, PIN
799010

..... Respondent(s)

For the Petitioner (s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. K. Nath, Adv.				
For the Respondent (s)	:	Mr. Kohinoor N. Bhattacharjee, GA Mr. S. Saha, Adv.				
Date of hearing	:	04.12.2023				
Date of delivery of Judgment & order	:	08.12.2023				
Whether fit for reporting	:	<table><tr><th>YES</th><th>NO</th></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
	√					

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioners as well as Mr. Kohinoor N. Bhattacharjee, learned GA appearing for the state-respondents No.1 & 6.

[2] All the petitioners were the employees of the respondent-Tripura Forest Development & Plantation Corporation [for short, *TFDPC*] and they all joined in their respective service on different dates either as Office Assistant or Corporation Forester. In due course of time, they also went on superannuation from 28.02.2019 onwards

i.e. long after the notification issued by the Central Government vide No.S.O.1420(E) dated 29.03.2018 by specifying that the amount of gratuity payable to an employee under the provision of Payment of Gratuity Act, 1972, [for short the Act], shall not exceed Rs.20,00,000/- [Rupees Twenty lakhs] in view of the provisions of Section 4(3) of the Act.

[3] It is the grievance of all the petitioners that all of them on their superannuation were paid Rs.10,00,000/- [Rupees Ten lakhs] as a retirement gratuity basing on the previous ceiling limit despite the fact of such enhancement of quantum of such gratuity by Central Govt. Thereafter, all of them filed a writ petition bearing no. W.P.(C) No.221 of 2023 in the High Court and the Single Bench of the Court without expressing any opinion on merit directed the respondents vide judgment dated 19.04.2023, to consider the case of the petitioners within a period of 3[three] months. Thereafter, in compliance of the said direction, the Managing Director of TFDPC issued a memorandum dated 17.07.2023 [Annexure-10 of the writ petition] according sanction of total amount of Rs.27,19,648/- for disbursement of balance amount of gratuity to above 6[six] writ petitioners based on the upper ceiling limit of gratuity to be Rs.20,00,000/- and thereafter, all of the petitioners were paid their respective balance amount of gratuity as per the list annexed with said memorandum. However, no interest was paid on the said balance amount and therefore, the present writ petition is filed by all of them praying for 9% interest on

the balance amount of gratuity as statutorily guided by sub-Sections 3 & 3A of Section 7 of the Act.

[4] For useful reference, both the provisions of sub-Sections 3 & 3A of Section 7 of the Act are set out below:

7. *****

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

(3A) If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3), the employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment on this ground.

[5] Mr. Roy Barman, learned senior counsel during hearing submitted that it is/was the statutory responsibility of the department to make payment of interest as they failed to pay total amount of gratuity payable within 30 days from the date(s) of retirement of the respective petitioners and thereby illegally utilised the said amount to the deprivation of the petitioners. Even the petitioners on 30.07.2023 issued legal notice [Annexure-12 of the writ petition] to the Managing Director and Executive Director of TFDPC claiming such interest @ 9% per annum on the balance amount of gratuity, which was turned down by them (notice recipients) vide letter dated 23.08.2023 [Annexure-13 of the writ petition] mainly on the ground that payment of gratuity basing on the enhanced ceiling limit of Rs.20,00,000/- was not adopted by the TFDPC earlier and necessary approval of Labour

Department, Government of Tripura in this regard was obtained on 15.06.2023 and the Finance Department, Government of Tripura also concurred the matter on 03.07.2023, subsequent to the order of the High Court dated 19.04.2023. They also stated that as per the order of the High Court dated 19.04.2023, the payment of interest over the balance gratuity was not permissible. Mr. Roy Barman, learned senior counsel, therefore, submitted that the respondents had deprived the petitioners from their statutory right which is required to be enforced by ordering the payment of interest on the balance amount of gratuity.

[6] Mr. Bhattacharjee, learned GA appearing for the state-respondents No.1 & 6 submitted that in view of the legal position after the notification issued by the Central Government, interest has to be paid on the balance amount of gratuity but that can, at best, be paid from 03.07.2023 when the Finance Department had concurred for payment of such balance amount of gratuity. As submitted further by Mr. Bhattacharjee, there was a direction issued by the Labour Commissioner, vide Memorandum dated 15.09.2016 [Annexure R/1 of counter affidavit of the respondent Nos. 2-5], restraining the TFDPC and other PSUs/Autonomous bodies/ Corporation etc. from making any payment under the Act without prior concurrence of Finance Department and therefore, unless such concurrence was received, it was not possible for TFDPC from making any such further payment and thus, there was no laches or fault on the part of the TFDPC. Mr. Bhattacharjee, learned GA also submitted that the State has to

undertake different development and beneficial works and therefore, financial stringency remains regarding implementation of different schemes, projects and orders and therefore, prior approval of the Finance Department is/was necessary for making payment of balance amount of gratuity and in this regard, both the TFDPC and Finance Department acted with all promptitude after the direction was given by the High Court in the order dated 19.04.2023 in W.P.(C) No.221 of 2023. More so, the TFDPC has its own financial crunch. Therefore, according to learned GA, interest, if any, imposed may be computed from 03.07.2023 till the payment of the balance amount gratuity.

[7] There is no dispute at the Bar that the petitioners are/were entitled to get payment of gratuity under the Act as per the enhanced ceiling limit of Rs.20,00,000/- as notified by Central Government vide notification date 29.03.2018. The oldest case of retirement amongst 6 petitioners is of petitioner No.3 who retired on 28.02.2019. The other petitioners went on retirement thereafter. Thus, all the petitioners have/had their entitlement of gratuity amount as per the enhanced ceiling limit of Rs.20,00,000/- but they were paid initially Rs.10,00,000/- as per the old ceiling limit. Their demand for further payment as per the enhanced ceiling limit was also turned down by the department.

[8] Sub-Section 3 of section 7 of the Act casts a duty upon the employer to arrange payment of gratuity within 30[thirty] days when it becomes payable and as per sub Section 3A of the Act, if the same is not paid within such period, the employer shall pay [*emphasis laid*],

from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify. The proviso to sub Section 3A(supra) has no applicability in the present cases of the petitioners. In other identical cases, the Single Bench of this High Court in W.P.(C) No.596 of 2017 analogously decided with W.P.(C) No.598 of 2017 and W.P.(C) No.599 of 2017 in between **Shri Bhupal Chandra Das & ors. vs. State of Tripura and ors.,** vide judgment dated 06.07.2017 directed the respondents to pay interest @8% per annum, on the balance amount of gratuity paid long after superannuation of some employees of TFDPC, computing from the date of expiry of 30 days of their respective date of superannuation till payment of remaining part of gratuity. Even if, any time is consumed for file processing and routing through Finance Department and Labour Department etc., the same cannot absolve of the employer from paying such interest. If the amount of gratuity is paid after 30 days when the employee become entitled to such payment, as mandated by Section 7 of the Act, payment of interest is obligatory unless the case come under the coverage of the proviso to sub- Section 3A of Section 7 of the Act, or unless exonerated otherwise statutorily.

[9] The submission of Mr. Bhattacharjee, learned GA that the TFDPC is a Government company having no financial outlay/budget available for salary/gratuity payment of the employee and therefore,

the same is required to be made available from the own source of corporation, does not generate much satisfaction in the mind of the court.

[10] Situated thus, the writ petition is allowed. The respondents are directed to make payment of interest @8% per annum to all the petitioners upon their respective balance amount of gratuity paid to them as per enhanced ceiling limit of Rs.20,00,000/-, computing from the next day of expiry of 30 days from the respective dates of their retirement from service till 21.07.2023 when the final payment was made. Such payment shall be made within 6[six] weeks from the date when copy of this judgment and order shall be furnished by the petitioners to the respondents.

Accordingly, the writ petition is disposed of.

JUDGE

**SATABDI
DUTTA**

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SATABDI DUTTA
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Sujay