

**HIGH COURT OF TRIPURA
AGARTALA**
IA No.01/2024 in WA No.10 of 2024
WA No.10 of 2024

Gayatri Chakraborty
.....Applicant/Appellant(s);
Versus
The State of Tripura & others
.....Respondent(s).

For Applicant/Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Koomar Chakraborty, Advocate.
For Respondent(s) : Mr. D. Sarma, Addl. G.A.,
Mr. A. Bhaumik, Advocate,
Mr. S. Dey, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA

Order

26/03/2024

Heard Mr. P Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel for the applicant/appellant, Mr. D. Sarma, learned Additional Government Advocate for the respondents-State and Mr. A. Bhaumik, learned counsel for the Agartala Municipal Corporation (AMC) on the prayer for condonation of delay of 457 days in preferring the instant memo of appeal through IA No.01/2024.

2. Writ petition was preferred by this appellant and one other seeking the benefit of gratuity under Payment of Gratuity Act, 1972 (Act of 1972, *for short*). The appellant had superannuated in the year 2010 while the other writ petitioner had superannuated in the year 2014 from the services of AMC. The writ petition was filed in the year 2022. The learned Writ Court however dismissed the writ petition as being barred by delay and laches. Only the first writ petitioner has preferred this appeal. As informed, the second writ petitioner

has not preferred any appeal. Incidentally, it needs to be mentioned here that several appeals were filed by the respondents-Corporation being aggrieved by the judgment passed by the learned Writ Court on 27.06.2022 in a batch of writ petitions of ex-employees of the same Corporation seeking gratuity benefit under the Act of 1972. The learned Writ Court had, at that instance, directed the Corporation to grant gratuity in terms of the Act of 1972. It had overruled the objection of the Corporation that the employees of the Corporation are governed by the CCS (Pension) Rules, 1972 which had been adopted by the Government of Tripura for the Corporation by notification dated 21.12.1991. Those writ appeals were dismissed by a common judgment dated 19.02.2024 upholding the view of the learned Writ Court that the employees of the Corporation are covered under the Act of 1972.

3. These writ petitioners however suffered a different fate though the instant impugned order has been delivered two months after that common judgment & order rendered in favour of the writ petitioners who were the ex-employees of the Corporation. The reason being that the writ petitioners had approached the Court in the year 2022 though the petitioners had retired in 2010 and 2014 respectively.

4. The appellant has preferred an interlocutory application to explain the delay. She has, in so many paragraphs of the interlocutory application, taken the plea that she is a septuagenarian; aged about 72 years and suffering from several old age ailments like arthritis, neurological disorder, etc. which required frequent visits to Sakra World Hospital, Bangalore over a period of time starting from 16.06.2022 i.e. prior to the passing of the impugned order on

06.09.2022 till 30.10.2023. The medical prescriptions dated 16.06.2022 till 30.10.2023 are enclosed as Annexure-I series. All the prescriptions relate to the same hospital at Bangalore. According to the applicant, she could not move her hands and legs properly. There was difficulty in her mobility. She had approached her learned counsel first on 05.01.2023 after knowing of the fate of her case. But thereafter she could not pursue it due to her serious illness and frequent visits to the doctor at Bangalore. Later she again approached her learned counsel after returning from Bangalore on 17.11.2023. The memo of appeal was finally ready on 14.12.2023 and it was filed on 10.01.2024, which occasioned a delay of 457 days.

5. Mr. Koomar Chakraborty, learned counsel for the applicant/appellant, submits that delay, though large, is not deliberate but duly explained on account of medical reasons. It is submitted that the Appellate Court in the case of *Agartala Municipal Corporation & another v. Smt. Ratna Roy & others [WA No. 161 of 2022]* and other analogous cases has held that the Agartala Municipal Corporation has a statutory obligation to pay gratuity to its ex-employees upon their retirement and failure to do so, would result in payment of interest for such delay in terms of Section 7(3) of the Act of 1972. This Appellate Court has also held that no question of waiver or estoppel would arise against a beneficial statute like the Act of 1972 conferring benefits of gratuity in favour of such employees. The Corporation has not been exempted from such liability by a notification of the State Government under Section 5 of the Act of 1972. As such, delay if any in approaching the Appellate Court by the appellant should not defeat her

legitimate rights to receive gratuity under the Act of 1972 from the due date. By Central Government's notification dated 24.05.2010, the ceiling of gratuity has been enhanced to rupees ten lakhs for those retiring after that date. As such, a purposive and beneficial construction of the provisions of the Act of 1972 has been accorded by this Court which the petitioner/appellant herein also deserves. Therefore, the delay may be condoned in the interest of justice.

6. Mr. A. Bhaumik, learned counsel for the Corporation has filed an objection to the present interlocutory application. Mr. D. Sarma, learned Additional Government Advocate for the respondents-State, has also opposed the prayer for condonation of delay. Learned counsel for the Corporation submits that the present appeal ought to have been filed on 05.10.2022. At the relevant point of time, the period for filing intra-Court appeal was governed by the Gauhati High Court Rules i.e. 30 days. Therefore, the applicant cannot take a plea that in view of the notification of the High Court of Tripura Rules on 04.01.2023, no limitation was prescribed for preferring an intra-Court appeal. As such, the contention that there was no period of limitation for preferring an intra-Court appeal is not correct in the eye of law. Learned counsel for the Corporation has also submitted that the medical prescriptions annexed to the IA No.01/2024 suggest visit for treatment purpose on few dates whereas the total delay is 457 days. There is also no explanation as to why when the memo of appeal was ready on 05.01.2023, the appellant met her advocate on 05.11.2023 leading to further ten months delay. No air tickets have been enclosed to substantiate that the applicant had been frequently moving out of the State for medical treatment to Bangalore. He submits that the appellant had approached

the Writ Court after 12 years of her retirement. Therefore, her case was dismissed on grounds of delay and laches. Appellate was a fence-sitter as the decision in the other batch of cases was rendered in July, 2022 and she approached the Writ Court in September, 2022. Learned counsel for the Corporation has also relied upon a decision of the Coordinate Bench of this Court dated 21.08.2023 passed in IA No.01/2023 in Review Petition No.43/2023 where this Court had refused to condone the delay of 416 days in similar circumstances where the review petitioners had approached the Court after relief of pay revision and scale advancement was granted to some other employees. Learned counsel for the Corporation, however, is not in a position to dispute that this Court in the case of *Agartala Municipal Corporation & another v. Smt. Ratna Roy & others* and other analogous writ appeals has held that the Corporation is under a statutory obligation under the Act of 1972 to grant the benefits of gratuity as per the revised ceiling to its ex-employees as no exemption notification in terms of Section 5 has been issued by the State Government.

7. We have considered the submission of learned counsel for the parties and taken note of the explanations urged by the applicant/appellant and also the objection filed by the Corporation.

Apparently, applicant approached the Writ Court after 12 years of her superannuation claiming benefits of gratuity under the Act of 1972. The learned Single Judge dismissed the writ petition on grounds of delay and laches. However, it is also not in dispute that the learned Writ Court has by judgment & order dated 27.06.2022 passed in a batch of writ petitions being

WP(C) No.218/2021 and other analogous matters held that the Corporation is under a statutory obligation to grant gratuity in terms of the Act of 1972 and not in terms of the CCS (Pension) Rules, 1972 which were adopted for the Corporation by the State Government vide notification dated 21.12.1991.

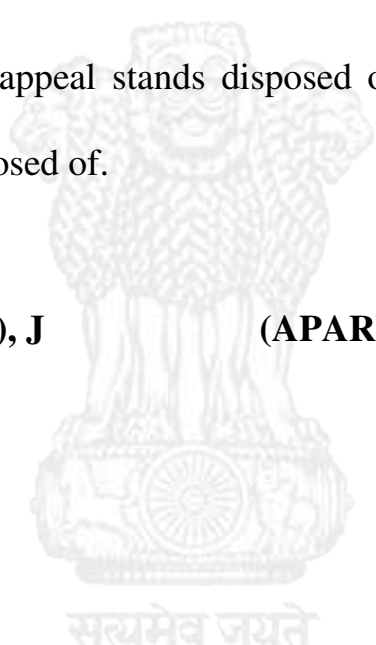
8. Applicant has taken the grounds of her medical treatment for the delay. Medical prescriptions enclosed to the interlocutory application of course indicate that she had been visiting Sakra World Hospital, Bangalore for her treatment on different dates since 16.06.2022 till 30.10.2023. The visits are spread over almost one and a half year. As such, the grounds of medical treatment cannot be outrightly dismissed. This explanation for the delay, therefore, is not manufactured though it appears that the appeal could have been filed earlier during interregnum in her treatment. However, we also cannot lose sight of the fact that this Court has, in a batch of writ appeals read by WA No.161/2022 in the case of *Agartala Municipal Corporation & another v. Smt. Ratna Roy & others* and other analogous cases held that the Corporation is under a statutory obligation to pay the gratuity under the Act of 1972 as per the ceilings revised from time to time. In those writ appeals also, certain writ petitioners had approached the Court for relief after a number of years of their retirement. The plea of delay and estoppel were negated by this Court in view of the beneficial nature of the legislation. The present appeal has been filed on 10.01.2024 before the judgment & order passed in the batch of writ appeals on 19.02.2024. Taking an overall view of the matter, therefore, we are inclined to condone the delay in the interest of justice. IA stands disposed of.

9. Since the main appeal [WA No.10/2024] relates to the claim of gratuity under the Payment of Gratuity Act, 1972 by the writ petitioner who is an ex-employee of the Corporation, we are of the view that her case should also be governed by the ratio rendered by this Court in the case of *Agartala Municipal Corporation & another v. Smt. Ratna Roy & others* and other analogous cases.

10. The instant appeal stands disposed of. Pending application(s), if any, shall also stand disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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