

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

WP(C) No. 489 of 2023

1. Bhuptai Ranjan Bhowmik and 11 others

.....Petitioners

-VERSUS-

1. The State of Tripura and 4 others

..... Respondents

WP(C) No. 491 of 2023

1. Nirmal Kanti Goswami and 9 others

.....Petitioners

-VERSUS-

1. The State of Tripura and 4 Others

..... Respondents

WP(C) No. 504 of 2023

1. Kartik Bhowmik and Another

.....Petitioners

-VERSUS-

1. The State of Tripura and 3 Others

..... Respondents

WP(C) No. 539 of 2023

1. Sri Manik Lal Sutradhar

.....Petitioner

-VERSUS-

1. The State of Tripura and 3 Others

. Respondents

WP(C) No. 550 of 2023

1. Narayan Chandra Saha and 4 Others

.....Petitioners

-VERSUS-

1. The State of Tripura and 4 Others

..... Respondents

WP(C) No. 551 of 2023

1. Mrinal Kanti Ghosh and 3 others

.....Petitioners

-VERSUS-

1. The State of Tripura and 4 Others

..... Respondents

WP(C) No. 559 of 2023

1. Rupak Das

.....*Petitioner*

-VERSUS-

1. The State of Tripura and 4 Others

..... *Respondents*

WP(C) No. 583 of 2023

1. Sri Ranjit Kumar Deb

.....*Petitioner*

-VERSUS-

1. The State of Tripura and 3 Others

..... *Respondents*

WP(C) No. 593 of 2023

1. Swadesh Deb

.....*Petitioner*

-VERSUS-

1. The State of Tripura and 4 Others

..... *Respondents*

WP(C) No. 594 of 2023

1. Nrimal Hrishi Das

.....*Petitioner*

-VERSUS-

1. The State of Tripura and 4 Others

..... *Respondents*

WP(C) No. 612 of 2023

1. Sri Subash Chandra Majumder and 62 Others

.....*Petitioners*

-VERSUS-

1. The State of Tripura and 3 Others

..... *Respondents*

WP(C) No. 738 of 2023

1. Narayan Chandra Debnath

.....*Petitioner*

-VERSUS-

1. The State of Tripura and 4 Others

..... *Respondents*

WP(C) No. 769 of 2023

1. Bikash Bhowmik and 4 others

.....*Petitioners*

-VERSUS-

1. The State of Tripura and 5 Others

..... Respondents

WP(C) No. 774 of 2023

1. Shyamal Banik and 7 Others

.....Petitioners

-VERSUS-

1. The State of Tripura and 5 Others

..... Respondents

WP(C) No. 45 of 2024

1. Sri Anup Kumar Saha

.....Petitioner

-VERSUS-

1. The State of Tripura and 4 Others

..... Respondents

B_E_F_O_R_E

HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate. Ms. R. Purkayastha, Advocate. Ms. S. Deb Barman, Advocate.
For Respondent(s)	:	Mr. S. S. Dey, Advocate General. Mr. Kohinoor N. Bhattacharjee, G.A. Mr. D. Sarma, Addl. G.A. Mr. K. C. Bhattacharjee, Advocate. Mr. R. G. Chakraborty, Advocate. Ms. A. Chakraborty, Advocate.
Date of hearing	:	25.04.2024
Date of delivery of judgment and order	:	26.04.2024
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. P. Roy Barman, learned senior counsel assisted by Ms. S. Deb Barman, learned Counsel Mr. S. Bhattacharjee and Ms. R. Purkayastha, learned counsel appearing for the petitioners. Also heard Mr. S. S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, Mr. D. Sarma, learned Addl. G.A. and Mr. K. C. Bhattacharjee, learned counsel appearing for the respondents.

[2] All the present petitions have been filed under Article-226 of the Constitution of India for necessary direction from this Court upon the respondents to extend leave encashment benefit to the petitioners in regard to their unspent earned leave and to quash and cancel the letter dated 14.07.2023 [WP(C)No.489 of 2023] , 13.07.2023 [WP(C)No.491 of 2023], 31.07.2023 [WP(C)No.504 of 2023], 07.07.2023 [WP(C)No.550 of 2023], 10.07.2023 [WP(C)No.551 of 2023], 11.08.2023 [WP(C)No.559 of 2023], 11.07.2023 [WP(C)No.593 of 2023], 13.07.2023 [WP(C)No.583 of 2023], 11.07.2023 [WP(C)No.594 of 2023], 20.09.2023 [WP(C)No.738 of 2023], 18.08.2023 [WP(C)No.769 of 2023], 31.07.2023, 11.07.2023, 20.09.2023, 08.08.2023 and 10.07.2023 [WP(C)No.774 of 2023], issued by the Managing Director, TRTC. In [WP(C) No.612 of 2023] the petitioners have prayed to setting aside the impugned rejection of the representations submitted by the petitioners for grant of leave encashment, communicated to them under letter dated 07.07.2023, 11.08.2023 and 18.08.2023. In WP(C) No.539 of 2023 the petitioners have prayed to sanction leave encashment benefit in favour of the petitioners in respect of his unspent leave.

[2.1] In WP(C) No.45 of 2024 the petitioners has urged for leave encashment and the full and final payment of gratuity to the petitioners with interest for deferred payment after adjusting the partial payment already made.

[3] The brief facts of the case are that the petitioners served in Tripura Road Transport Corporation [for short, TRTC] under various positions and on attaining the age of superannuation they represented before the respondent-corporation seeking retirement benefits such as gratuity and earned leave encashment. Initially, when the request was made it was not considered and the petitioners filed representation before the respondent-corporation and since the same were pending unconsidered, some of them filed writ petitions before this Court and the same were disposed of directing the respondents to consider their representation in accordance with law within a specific period.

[4] When the respondents have not complied with Court orders, the contempt case came to be filed for non-compliance and wilful disobedience of the orders of the High Court passed in the writ petitions. During the pendency of the contempt cases, the respondent-corporation came up with a communication indicating that the corporation is having no objection to make the payment and they are in helpless situation due to lack of funds and accordingly, requested to the State Government for sanctioning of the required funds. Since the orders are passed, contempt cases were closed giving liberty to the petitioners to challenge the said communication of Managing Director, TRTC.

[5] Hence, the present writ petitions are filed challenging the said communication of the Managing Director, TRTC which is impugned in the present writ petition.

[6] Mr. P. Roy Barman, learned senior counsel appearing for the petitioners argued that entitlement of leave encashment benefit to employees of TRTC in WP(C) No.160 of 2019 [Hiranmoy Bagchi & Ors v. The State of Tripura & Ors] this Court vide order dated 11.12.2019 observed that leave encashment would be a onetime liability, payable to the employee upon his retirement at the scale of pay prevailing at the relevant time without any further revision or escalation. One more element of leave encashment is that the employee to the extent the leave encashment benefit can be accumulated, would be inclined not to avail of leave. In other words, he would be paid such encashment benefit for the number of days he could have been on leave but chose to work for the employer. This would reduce the requirement of the corporation of maintaining leave substitute staff. In other words, leave encashment benefit is more in the nature of deferred payment of an employee for the period during which though he could have availed leave with full pay, he chose to discharge his duties. Stating so, this Court directed the State government to consider the said demand of releasing leave encashment benefit to the employee of TRTC.

[7] Pursuant to the aforesaid direction given by the Court passed in WP(C) 160/2019, a committee was formed and that committee made recommendation for extending leave encashment benefit to the employees of TRTC. Subsequently, vide sanction order, dated 08.12.2022, issued by the Managing Director, TRTC, leave salary for unspent earned leave for 240 days has been sanctioned and released in favour petitioners in WP(C) No.160 of 2019. In this regard, it is necessary to mention that the Hon'ble Apex Court in *State of Uttar Pradesh & Ors. v. Arvind Kumar Srivastava & Ors.*, reported in (2015) 1 SCC 347 succinctly held thus that *"Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently."*

[8] In this case also, the Petitioners are similarly situated with Sri. Bhuban Ch Das, Retd. Traffic Superintendent, Sri Hiranmoy Bagchi, Retd. Bus Conductor & Sri Ajoy Bhattacharjee, Retd. Bus Conductor, all of whom had been allowed leave encashment benefit by the aforesaid sanction orders dated 08.12.2022 issued by the Managing Director TRTC. The Petitioners submitted similar and identical representations to the Managing Director, TRTC. By that representation, the petitioners stated, that, on retirement, they became entitled to leave encashment benefit. But till date, such benefit has not been extended to them. The petitioners further stated, that, they are absolutely similarly situated with the petitioners in the earlier litigation in whose favour, leave encashment benefit has been released by the Managing Director, vide sanction orders, dated 08.12.2022. In their representations, the petitioners also stated that in the aforesaid sanction orders, reference of contempt cases, vide Cont Cas (C) No. 25/2022 & Cont Cas (C) No.

42/2021 has been given, and the said Contempt cases arose out of the Judgment of this Court, by which the Court directed the TRTC to consider allowing of leave encashment benefit to the employees of TRTC on their retirement if the retired employees had unspent earned leave in their credit.

[9] The said Judgment of this Court is *judgment-in-rem* and such direction is applicable to all retired employees of TRTC. The benefit flowing from such direction cannot be confined only to the writ petitioners, as pursuant to such direction of the Court, leave encashment benefit has been introduced in respect of employees of TRTC and the petitioners are also entitled to such benefit, being covered by the said judgment. The petitioners also stated that they are getting EPF pension which is very meagre amount and by such pension, even monthly cost of medicine for controlling blood pressure cannot be arranged. Stating so, the petitioners urged upon the Managing Director, TRTC, to give him the benefit of unspent earned leave encashment by sanctioning and releasing cash equivalent of unspent earned leave salary at the earliest.

[10] Respondents are sitting idle over the representations, in extending the leave encashment benefit, the respondents cannot act on a pick and choose basis. Leave encashment benefit has to be given to all employees of TRTC. The petitioner and those employees, who have been given leave encashment benefit, vide sanction orders, dated 08.12.2022, cannot be distinguished in any manner. It has been incumbent upon the respondents to extend leave encashment benefit to all employees of TRTC. The respondents, by confining leave encashment benefit to those employees, who have been the petitioners in Cont. Cas(C) 42/2021 & Cont. Cas(C) 25/2022, have acted arbitrarily and failed to act fairly by treating equals unequally.

[11] Though the petitioners are similarly situated with those who have been sanctioned leave encashment benefits in their favour but the petitioners have been left behind. Confronted with such situation the

petitioners filed writ petition vide WP(C) 86/2023, praying for extending leave encashment benefit in respect of their unspent earned leaves.

[12] Thereafter the Court after hearing both the parties vide Order, dated, 10.02.2023, passed in WP(C) No-86 of 2023, disposed of the same directing the respondents to consider the representation of the petitioners in accordance with law within a period of three months from the date of Order. Thereafter the petitioners by joint forwarding letter, dated, 16.03.2023, forwarded the copy of the Order, dated, 10.02.2023, passed by this Court in WP(C) 86/2023 and it has been duly received by the office of the respondents. The petitioner requested the respondents to do the needful in compliance with the direction of the Court. As the respondents did not comply with the direction passed in the aforesaid writ petition within the stipulated period, the petitioners filed contempt petition before the Court, vide Cont. Cas(C) No- 103/2023.

[13] Thereafter, the Court vide Order, dated, 27.07.2023, disposed of Cont. Cas (C) 103/2023, taking note of the fact that, the order, dated, 10.02.2003 passed in WP(C) 86/2023 have already been complied with and a communication has also been sent to the petitioners when contempt case was taken up by the Court on, 27.07.2023, the learned Government Advocate produced a copy of the letter, dated, 14.07.2023, issued by the Managing Director, wherein it has been stated that Government of Tripura has not yet released any fund towards leave encashment benefit to the employees of TRTC and TRTC has no such fund to meet the demand of leave encashment. Stating so, the representations of the petitioners were rejected thus, the contempt petition was closed. It has been further contended that most arbitrarily the respondents have issued the impugned letter, dated, 14.07.2023, denying the benefit of leave encashment benefit to the petitioners on the ground of insufficiency of funds.

[14] Similarly situated employees have already been given leave encashment benefit following the order of the Court. It is pertinent to mention here that, the petitioners cannot be denied the same benefit as were

given to similarly situated employees. It is further pertinent to mention that, the respondents are bound to grant relief to its employees who are similarly situated even though they are not party to the litigation. A final decision of the Court must not only be respected but should also be enforced and implemented evenly and without discrimination in respect of all the employees who have obtained order from the court. It should not depend upon who comes to the Court and who does not.

[15] Since the respondents have granted leave encashment benefit to similarly situated employees pursuant to an order of the Court, the action of the respondents to deny the same relief to the similarly situated employees is *per se* illegal, arbitrary and in defiance of Article-14 of the Constitution of India. The benefit flowing from Order of the Court by which similarly situated employees were given the benefit of leave encashment, cannot be said to be in *personam*, but the same has to be treated in *rem* and must be complied with in respect of all similarly situated persons. Since the petitioners are the retired employees under the respondents, where such benefits have been granted to other similarly situated retired employees, hence the petitioners cannot be treated differently nor deprived of service and leave encashment benefits which have been extended to similarly situated employees.

[16] While issuing the impugned letter, dated, 14.07.2023, the respondent No. 3 has not made any application of mind to the issue involved and without application of mind issued the impugned letter, denying the benefit of leave encashment to the petitioners. There has been absolute non application of mind by respondent No. 3. It has not been taken into consideration by the respondent No. 3, that, retired employees of TRTC forms a homogenous class and in the matter of extending the benefit of leave encashment which was not earlier available to the employees of TRTC, the retired employees cannot be treated differently.

[17] The petitioners have been rendered arbitrary, discriminatory and unreasonable action by the respondents. The respondents have infringed

upon the legal and constitutional rights of the petitioner. As the causes of action are similar and identical the petitioners have jointly filed this writ petition against the same set of respondents seeking the same relief on the basis of same and identical facts.

[18] Ms. R. Purkayastha, learned counsel appearing for the petitioners has submitted that in the year 1950, 'Road Transport Corporation Act 1950, a Central Legislation, was enacted, having its applicability throughout India. The provisions of the said Act came into force in Tripura w.e.f. 01.03.1961 and as such in exercise of the powers conferred under Section-44 of the Road Transport Corporation Act, 1950, the Government of Tripura, Transport Department framed Tripura Road Transport Corporation Rules, 1967 (in short Rules, 1967) published on 16th January, 1967. By virtue of the provisions of the Rules, 1967 the Tripura Road Transport Corporation (in short TRTC) was constituted by the Government of Tripura. Precisely, the TRTC is guided by the provisions of the Rules, 1967 and also other provisions of law as is applicable to other employees of the Government of Tripura. Be it mentioned here that the employees of TRTC are full time employees under the control of the Respondents who retire after attaining superannuation at the age of 60 similar to that of other State Government employees.

[19] Section-34(1) of the Road Transport Corporations Act 1950 clearly says "*the State Government may, after consultation with a Corporation established by such Government, give to the Corporation general instructions to be followed by the Corporation and such instructions may include directions relating to the recruitment, conditions of service and training of its employees, wages to be paid to the employees, reserves to be maintained by it and disposal of its profits or stocks*" which inter-alia means that the TRTC employees are directly under the control of the State Government in every respect and as such, there should not be any disparity between the State government employees and TRTC employees.

[20] Further, the State Government in exercise of the powers conferred by Section-45 of the RTC Act, 1950 has framed the Tripura Road Transport Corporation (Officers & Other Employees) Recruitment Regulation, 1986. This Section-45 clearly holds that the corporation may with the previous sanction of the State Government frame rules for administration of the affairs of the Corporation. Not only this, a bare reading of the entire Act evidently reflects that the entire control of the Corporation is with the State Government which obviously means that the State Government shall not make any disparity between the State Government employees and TRTC employees.

[21] The aforesaid assertion becomes more clear from the fact that the pay and allowances of both the TRTC employees and the State Government employees are paid and payable from the same fund head of the Government of Tripura i.e. non-plan fund bearing non-plan head No. 5055. So, no question of discrepancy between the State Government employees and TRTC employees should arise at any point of time. Moreover, Section- 43 of the Road Transport Corporations Act 1950 clearly says that all members of a corporation and all officers and servants shall be considered as public servants within the meaning of Section-21 of Indian Penal Code.

[22] Since the establishment of TRTC all the employees and workers of the corporation have been given the benefits of pay scales including all allowances and other benefits as given to the employees of the Tripura Government on the basis of the recommendations of different Pay Commissions which continued till 31 March, 2001. But after 31 March, 2001, it was experienced that the employees and workers of the TRTC are being deprived of some benefits which are given to the employees of the Tripura government and the benefits which are not being given to the employees and workers of the TRTC.

[23] Under the Tripura Road Transport Corporation Rules, 1967, framed by the Govt. of Tripura in exercise of the powers conferred under

Section-44 of the Road Transport Corporation Act, the employees and workers of the TRTC are entitled to Leave and Pension Contribution. But that has been denied to the employees and workers of the TRTC most illegally. The employees and workers of the TRTC have the right under the rules of 1967 to en-cash Earned Leave at credit. The Board of the TRTC in its 91st meeting held on 16.12.1993 decided that the maximum limit of accumulation of Earned Leave is extended to 240 days from 180 days in pursuant to the decision of the State Govt. communicated under Memo dated 18.07.88 of the Finance Dept., Government of Tripura having effect from 1.07.1994.

[24] In spite of this decision taken by the Board of the TRTC, the employees and workers of TRTC who have earned leave at their credit are not paid the encashment of the earned leave at their credit at the time of superannuation from their services. Moreover, under Rule-35 of the Rules of 1967, TRTC adopted another resolution, subject to the approval of the State Government (which inter alia means that the employees of TRTC are under the direct control of the State Government), for introducing the Tripura State Civil Services (Leave) Rules, 1986 for providing the benefit of the Leave Encashment scheme in TRTC and it is observed that the final decision on the issue would be taken by the Board in due course on receipt of the Govt. approval in this regard.

[25] In view of the Memo dated 11th July, 1994, relating to the encashment of Earned Leave at credit, further resolution as adopted in the Board meeting on 13.08.99 has got no necessity. It is further mentioned here that the Govt. of Tripura has increased the encashment of earned leave at credit up to 300 days vide office Memo dated 30th January, 1999, Therefore from the above it is clear that the employees and workers of TRTC are also entitled to encashment of earned leave at credit up to 300 days.

[26] It has been further averred that the employees of the Tripura Tea Development, Agartala Municipal Council (now Corporation) and Tripura Handloom, Handicrafts Development Corporation, Tripura Jute Mill,

TSIC, TFDPC etc which are undertakings/government companies of the Government of Tripura, have been allowed to have the Encashment of Earned Leave Salary at credit and as such, non granting of the same to the employees and workers of TRTC is arbitrary, discriminatory and violative of the provisions of Article-14 of the constitution of India.

[27] The General Manager of the TRTC issued a Notice dated 12th May, 1972, notifying that all Government Rules will apply to the employees and workers of the TRTC until framing of rules by the Corporation and violation of Government rules will be deemed as indiscipline and will be seriously dealt with. But, since till date no rules have been framed by TRTC, so obviously all government rules are as well applicable to the employees and workers of TRTC which inter alia means that Civil Service Classification and Control (Appeal) Rules, 1965, and CCS (Pension) Rules 1972 adopted by the Government of Tripura as applicable to the State government employees will also apply to the employees of TRTC and as such pay scales of the Government employees with all allowances including D.A. and pensionary benefits including leave encashment shall also be allowed to the employees and workers of TRTC.

[28] Accordingly, a Committee comprising of 5 members was formed. On 17.03.2018, the Committee after considering entire financial viability and distress of the employees of TRTC, had submitted its report communicated to the respondent No.4 by letter dated 19.09.2018 with specific recommendation to the effect that leave encashment and pension to the TRTC employees may be considered and as such may be provided by the Government. Though the Committee has specifically observed that the TRTC employees are entitled to get pension and leave encashment, yet most illegally by decision dated 11.09.2018, the said proposal for introduction of pension and leave encashment benefits for TRTC employees had been regretted.

[29] In pursuance to the judgment of this Court, the respondents have decided that the employees of TRTC are entitled to leave encashment

and as such on 08.12.2022 have extended the benefit of leave encashment to only 4 retired employees of the TRTC, who were the petitioners of the writ petition vide W.P.(C) 160/2019 though the judgment specifically directed to provide the same benefit to all the employees of TRTC. It is further submitted that they have been agitating for their demand of leave encashment and pension since long, both through their registered union as well as individually but the respondents have most illegally deprived the petitioners from their legitimate claims. Such an act on the part of the respondents is highly arbitrary, discriminatory and against the principle of right to equality as enshrined in Article-14 of the Constitution of India.

[30] Though a time frame had been fixed by this Court for consideration of the cases of the petitioner, but the respondents did not attend their representations within the time frame. However, on issuance on contempt notice, by the petitioners in separate batches, the respondents have rejected the entitlements of the petitioners. This rejection of the prayer of the petitioners for granting leave encashment benefit to the petitioner is highly arbitrary, perverse, illegal and violative of the principle of the right to equality enshrined under Article-14 of the Constitution of India. Furthermore, it is the settled position of law as has been laid down by the Apex Court that the rights/legal entitlements of the employees i.e. the petitioners cannot be rejected on the ground of the financial constraint of the employer.

[31] Mr. S. Bhattacharjee, learned counsel has submitted on the same line as Mr. P. Roy Barman, learned counsel has submitted in favour of the petitioners. But Mr. Bhattacharjee, learned counsel appearing for the petitioner has placed a communication vide order, dated 12.05.1972 issued by the General Manager, TRTC, wherein it has been informed to the employees of TRTC, that, as per decision taken by the Corporation, all Govt. rules will apply to TRTC until framing of rules by the corporation and any violation of Govt. rules will be deemed as indiscipline and will be seriously dealt with.

[32] Vide Memorandum, dated, 10.10.2014, issued by the Managing Director, TRTC it was conveyed to all, that, in the 138th meeting of Board of Directors of TRTC held on 10.04.2012, it has been decided by the Board to enhance Earned Leave of Employees of TRTC from existing 240 days of Earned Leave to 300 days earned leave.

[33] The petitioner filed 2 RTI Applications, on 11.12.2023 & 13.12.2023, respectively before the SPIO (O/o the MD, TRTC) & (O/o the Secretary, Transport Department, Govt. of Tripura. In the application, the petitioner specifically sought for information to the effect that, name of the particular department of the Government of Tripura, regarding sanctioning & releasing of funds to employees of TRTC. In reply to the same, the Deputy Managing Director, TRTC, vide letter, dated, 16.03.2024, informed the petitioner, that, Transport Department, Govt. of Tripura, releases fund in favour of TRTC under "Grants to PSUs". The TRTC sanctions salaries to employees of TRTC. But no information has been provided by the Transport Department, in terms of Section-6(1) of the RTI Act, 2005, to the petitioner, in respect to the RTI Application, dated, 13.12.2023, even though 30 days has been completed on 12.01.2024. The earned leave is the condition of service of the petitioner and it is has been enhanced to the employees of TRTC from existing 240 days to 300 days as per the Memorandum dated 10.10.2014.

[34] The petitioners are entitled to get benefit of unspent earned leave. The respondents have specifically and categorically represented to the petitioner, that, they are entitled to 300 days earned leave and as such the respondents are estopped from saying, that, the employees of TRTC including the petitioner herein are not entitled to the benefit of unspent earned leave. If the petitioner availed the 300 days earned in their service tenure, the respondents have been under obligation to pay the petitioner for the period during which the petitioner would have been in earned leave as granted by the respondents. As the petitioner did not avail the earned leave, the respondents are under obligation to make payment of the leave encashment benefit to the petitioner. The respondents have utilized the

money belonging to the petitioner for many years and have earned interest on that amount. In view of that, the respondents are under obligation to make payment of leave encashment benefit with interest.

[35] Be it specifically mentioned here, that benefit of leave encashment is nothing but payment of salary for the leave earned and credited but not availed by an employee. An employee is entitled to leave salary for un-availed leave to a maximum limit of 300 days. It is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit. It is well settled provision of law, that, so far pensionary benefits are concerned, all such benefit should be paid within one month of retirement from service, if not paid, interest is to be paid for deferred payment. Even if there is no statutory prescription for paying interest for earned leave and there is also no administrative instruction, then also the pensioners are entitled to interest for deferred payment of pensionary benefit, if such payment is paid beyond one month. Leave encashment benefit is the part and parcel of pensionary benefits.

[36] The petitioner is also not entitled to regular monthly pension under CCS (Pension) Rules. They are only entitled to gratuity. That is the only substantial benefit which the Petitioner got after retirement. The petitioner did not avail earned leave, considering the fact, that, if the earned leave remains unspent, he would be able to get the benefit of it after his retirement on superannuation and it will substantially help him a lot after retirement. For this, despite being in urgent need of earned leave, the petitioner restrained himself, so that, after retirement he can get the benefit which would help him in post retiral life, so far his maintenance and livelihood are concerned.

[37] In terms of the order, dated 12.05.1977, the Tripura State Civil Services (Leave) Rules, 1986, is applicable to the employees of TRTC. Chapter-IV of the Rules, 1986, deals with kinds of leave due and admissible. Rule-25 of the Rules, 1986, provides, that, earned leave shall be credited to

the leave account of Govt. servant who is serving in a Department other than a vacation department at the rate of 2 and half days for each completed calendar month of service which he is likely to render in a half year of the calendar year in which he comes under the provisions of these rule or in which he is appointed as the case may be.

[38] It has been further contended that, notwithstanding any express provision regarding denial of payment of leave encashment benefit after retirement is concerned, the petitioner is entitled to leave encashment benefit for the simple and obvious reason, that, it is the respondents who have granted 300 days earned leave to the petitioner. As they did not avail the earned leave, the petitioners are entitled to get the benefit; so far unspent earned leave, is concerned. It is well settled position of law that pay and allowances includes benefit of leave encashment, which is nothing but salary for the un-availed leave to the credit of the employees of TRTC.

[39] In support of his case, he has placed reliance on a decision of the Hon'ble Apex Court in *Jagadish Prasad Saini & Ors v. State of Rajasthan & Ors* [Civil Appeal. No.6953 of 2022] wherein, the Court has observed as under:

“20. Evidently, these rules were framed to enable the absorption of employees and teachers of non-government aided institutions. What is relevant for the purposes of this case is that by Rule 5(viii), carry forward of existing privilege leave is denied; likewise, the period of service in aided institutions is not to be reckoned for the purpose of gratuity under Rule 5(ix). Every employee had to furnish an undertaking in the prescribed form to accept the terms and conditions. Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable. In the opinion of this court, the condition in clause (viii) of Rule 5 i.e., carry forward of balance privilege leave, is barred and requiring employees to seek encashment from their previous employer, i.e., aided institutions, is an arbitrary and unconscionable condition, which cannot be enforced. Speaking that such conditions are enforceable, this court, recently, in *Pani Ram vs. Union of India & Ors.* after quoting the observations in *Central Inland Water Transport Corporation Limited & Anr. V Brojo Nath Ganguly & Anr*¹⁰ held as follows:

23.....Right to Equality guaranteed Under Article 14 of the Constitution of India would also apply to a man who has no choice or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of Rules as part of the contract,

however unfair, unreasonable and unconscionable a Clause in that contract or form or Rules may be.”

[40] Mr. Bhattacharjee, learned counsel has further placed his reliance on a decision of the Apex Court in State of *Karnataka and Others v. C. Lalitha*, reported in (2006) 2 SCC 747, wherein, the Court has observed ad infra:

“29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the court that would not mean that persons similarly situated should be treated differently. It is furthermore well-settled that the question of seniority should be governed by the rules. It may be true that this Court took notice of the subsequent events, namely, that in the meantime she had also been promoted as Assistant Commissioner which was a Category I Post but the direction to create a supernumerary post to adjust her must be held to have been issued only with a view to accommodate her therein as otherwise she might have been reverted and not for the purpose of conferring a benefit to which she was not otherwise entitled to.”

[41] Another case as Mr. Bhattacharjee, learned counsel wants to cite as the facts and circumstances of the preset case is similar and i.e. in *State of Rajasthan and Another v. Senior Higher Secondary School Lachhmangarh and Other*, reported in (2005) 10 SCC 346, wherein, the Court has held thus:

“15. A critical examination of Rules-47 to 53 in Chapter-VI prescribing various categories of leave admissible to an employee as indicates that benefit of leave encashment is nothing but payment of salary for the leave earned and credited but not availed by an employee. “Privilege leave” admissible to an employee belonging to non-teaching or teaching staff is 15 days in every calendar year. The un-availed portion of privilege leave is carried forward to the next year up to a maximum limit of 300 days under Rule-51 an employee is entitled to leave salary for un-availed privilege leave and half pay leave. Rule-51 reads thus:

51. Amount of leave salary: (I) An employee on privilege leave is entitled to leave salary equal to the pay to which he is entitled to on the day before the leave commences.

(2) An employee on half-pay leave will be entitled to leave salary equal to half the amount specified in sub-rule (i) above subject to a maximum of Rs.3000.

Provided that this limit shall not apply if the leave is taken on medical certificate or for pursuing an approved course of study otherwise than on study leave terms.

(3) An employee on commuted leave will be entitled to leave salary as admissible during the privilege leave.

(4) An employee on extraordinary leave is not entitled to any leave salary.

21. As we have held about, the expression “pay and allowances” in Section-29 read with the wider definition of the word “salary” in Section-2(r) of the Act has a very wide connotation. We have come to the conclusion that the expression includes benefit of leave encashment which is nothing but salary for the un-availed leave to the credit of the employee.

22. Section-16 confers rule-making power on the State Government to regulate “conditions of service” of employees of aided institutions. The section specifically confers power to frame rules regarding entitlement of leave. If leave salary is a kind of salary within the wide definition of “salary under Section-2(r) the rules to regulate conditions of service of employees of aided institutions, must be so framed as to maintain parity in conditions of service in that regard with employees in government institutions. That is the mandate of Section-29 of the Act. The contention, therefore advanced that subject-matter of entitlement of leave encashment is covered by Section-16 of the State but is beyond the purview of Section-29 of the Act, is fallacious and has to be rejected.”

[42] Mr. S. S. Dey, learned Advocate General appearing for the respondent-State has submitted that insofar as the gratuity is concerned that being the statutory right in the writ petition, the gratuity shall be released without any delay. He has submitted that a committee was constituted for the purpose of deciding the issue. The committee has opined that it would be up to TRTC to give the benefit of leave encashment from its own resources. The government has decided to accept the report. Accordingly, the government took a final decision to the effect that without adding to the burden of the government beyond the salary and gratuity payments, TRTC can consider leave encashment and enhanced matching pension contribution to EPF subject to availability of its resources.

[43] Insofar as the leave encashment is concerned, he argued that the petitioners are entitled for earned leave which they are suppose to avail but regarding the encashment of the said leave there is no specific statutory provision enabling to encashment to the said leave. He also contended that in the absence of any specific Act or Rules and also in the absence of any such policy or scheme enabling them for claiming of cash towards the earned leave, the petitioner cannot maintain the writ. Thus, the writ petition needs to be dismissed as devoid of merits.

[44] In support of his case has relied on a decision of the Division Bench of this Court in *All Tripura EPS Pensioners' and Employees' Association, v. The State of Tripura & Ors in WA. No.218 of 2022*, wherein, the Court has held thus:

“[12] Upon hearing the submissions made by the learned counsel appearing for the parties and on perusal of record, this Court is of the view that violation of doctrine of recording (opportunity of personal hearing not been given) and violation of principles of natural justice as pointed out by the appellant is not applicable in the present case since no right of the appellant has been infringed by the respondent in passing an order dated 28.08.2020 and thus, the question of issuing a notice before passing an adverse order does not arise to the facts of this case as the same is passed considering the representation of the pensioners as per the direction of this Court. On the point of discrimination, Article 14 of the Constitution of India will not have a role to play since the pensioners before this Court belong to different associations/corporate bodies and it is not the case that they all are maintaining the equality with all other organizations under the State government. It is not the case of the appellant that some employees in one of their organizations are being extended the benefit of pension and some were denied. Hence, the case of the appellant does not come under the Article 14 of the Constitution of India and it is not a case of discrimination.

[13] This Court cannot compel the Government in issuing a mandamus to frame any policy or a scheme as the same is not in the domain of Article 226 of the Constitution of India but, it is purely on the welfare State to frame any such policy.

[14] The argument made by the appellant that the proceedings dated 28.08.2020 passed by the respondent-State is arbitrary in nature and the policy of the government is bad, cannot be accepted since no policy has been framed and the question of challenging any such policy is not before this Court. The appellant has also contended that an arbitrary, completely fabricated order has been passed by the respondent-State rejecting the claims of the pensioners, but, the appellant have not made out a case to prove that the proceedings dated 28.08.2020 are fabricated and insofar as other points on discrimination are concerned, it has already been answered by the learned Single Judge. We find no infirmity in the judgment and order passed by the learned Single Judge on 06.09.2022.”

[45] Learned Advocate General also placed his reliance on a decision of the Hon'ble Apex Court in *State of Maharashtra and Another v. Bhagwan and Others*, reported in (2022) 4 SCC 193 wherein, the Court has observed thus:

“28. As per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the

Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having financial consequences.

29. In the present case, WALMI being an autonomous body, registered under the Societies Registration Act, the employees of WALMI are governed by their own Service Rules and conditions, which specifically do not provide for any pensionary benefits; the Governing Council of WALMI has adopted the Maharashtra Civil Services Rules except the Pension Rules. Therefore, as such a conscious policy decision has been taken not to adopt the Pension Rules applicable to the State Government employees; that the State Government has taken such a policy decision in the year 2005 not to extend the pensionary benefits to the employees of the aided institutes, boards, corporations, etc.: and the proposal of the then Director of WALMI to extend the pensionary benefits to the employees of WALMI has been specifically turned down by the State Government. Considering the aforesaid facts and circumstances, the High Court is not justified in directing the State to extend the pensionary benefits to the employees of WALMI, which is an independent autonomous entity.

30. The observations made by the High Court that as the salary and allowances payable to the employees of WALMI are being paid out of the Consolidated Fund of the State and/or that the WALMI is getting grant from the Government are all irrelevant considerations, so far as extending the pensionary benefits to its employees is concerned. WALMI has to run its administration from its own financial resources. WALMI has no financial powers of imposing any tax like a State and/or the Central Government and WALMI has to depend upon the grants to be made by the State Government.

31. Now, so far as the observations made by the High Court that the amount available with WALMI and deposited with EPF towards the employee's contribution itself is sufficient to meet the financial liability of the pensionary benefits to the employees and, therefore, there is no justification and/or reasonable basis for the State Government to refuse to extend the benefit of pension to the retired employees of WALMI is concerned, it is to be noted that merely because WALMI has a fund with itself, it cannot be a ground to extend the pensionary benefits. Grant of pensionary benefits is not a one-time payment. Grant of pensionary benefits is a recurring monthly expenditure and there is a continuous liability in future towards the pensionary benefits. Therefore, merely because at one point of time, WALMI might have certain funds does not mean that for all times to come, it can bear such burden of paying pension to all its employees. In any case, it is ultimately for the State Government and the Society (WALMI) to take their own policy decision whether to extend the pensionary benefits to its employees or not. The interference by the judiciary in such a policy decision having financial implications and/or having a cascading effect is not at all warranted and justified.

32. In view of the above discussion and for the reasons stated, the impugned common judgment and order¹ passed by the High Court directing the State to extend the pensionary benefits to the employees of WALMI is unsustainable both in law and on facts. Accordingly, the impugned common judgment and order passed by the High Court deserves to be quashed and set aside and is accordingly quashed and set aside. It is held that the employees of WALMI, which is an independent autonomous body registered under the Societies Act are not entitled to the pensionary benefits.”

[46] Further, he has drawn attention of this Court to the Road Transport Corporation Act, 1950 wherein it has been categorically indicated that the State government may, by notification in the official Gazette, make rules to give effect to the provisions of this Act. But, no such thing has been done. For ready reference, Section 44 of the Tripura Road Transport Corporation Act, 1950 may be reproduced hereunder:

“44. Power to make rules. (7) The State Government may, by notification in the Official Gazette, make rules to give effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

[(a) the conditions and manner of appointment of Directors of a Corporation, the representation in the Board of the Central and State Governments, and where shares are issued to other parties under sub-section (3) of section 23 of such shareholders and generally all matters relating to the constitution of the Board;]

"[(6) Remuneration, allowances or fees paid to the Directors of the Corporation or other persons associated with the Board under section 10;]

(c) The term of office of, the manner of filling casual vacancies among [Directors] of the Corporation;

(d) The number of [Directors] necessary to constitute a quorum at a meeting of the "[Board];

(e) The conditions of appointment and service and the scales of pay of the [Managing Director, the Chief Accounts Officer, the Financial Adviser or, as the case may be, the Chief Accounts Officer-cum-Financial Adviser] of the Corporation;

(f) The number and term of office of, the allowances to be paid to, the procedure to be followed by, and the manner of filling casual vacancies among, members of an Advisory Council;

(ff) the procedure in accordance with which any stores may be declared obsolete under sub-section (2) of section 19;]

(g) The manner in which the shares of the Corporation shall be allotted transferred or redeemed;

(h) The manner in which the net profits of the Corporation shall be utilised;

(i) The date by which, and the form in which, the budget shall be prepared and submitted in each year under sub-section (1) of section 32;

[(j) the form in which the annual statement of accounts shall be prepared;]

(l) The form in which the returns, statistics or reports shall be submitted under section 35;

(m) The procedure to be followed by an arbitral Tribunal under section 40.

45. Power to make regulations: (1) A Corporation may with the previous sanction of [the State Government and by notification in the Official Gazette], make regulations, not inconsistent with this Act and the rules made thereunder for the administration of the affairs of the Corporation.”

[47] Regarding appointment and pay and allowance Chapter-VII of The Tripura Road Transport Corporation Rules, 1967 it has been contended that except the Chief Executive Officer, General Manager, no other employee is entitled for encashment of their earned leave in absence of the statute and prayed to dismiss the writ petitions. For the purpose of reference point No.4 of Chapter-VII may be reproduced hereunder:

“4. The Chief Executive Officer or the General Manager and the Chief Accounts Officer who are non-Government servants or being Government servants have subsequently ceased to be in such service, shall be entitled to leave and leave salary admissible to other officers of the corporation under the regulations made by the Corporation.

Provided, that it shall be competent for the corporation to grant leave for a maximum period of three months and for the administrator to grant leave for a period exceeding three months.”

[48] Mr. K. C. Bhattacharjee, learned counsel appearing for the TRTC has contended that TRTC has not adopted any rules and there is no provision for making the payment of cash towards the earned leave to his employees and TRTC rendered its business and do not have any fund and also there are no rules and thus, the payment of cash towards earned leave do not arise.

[49] Mr. P. Roy Barman, learned senior counsel has drawn attention of this Court to notification dated 12th May, 1972 wherein, it has been categorically indicated that TRTC has adopted all rules of the State Government and the respondent-corporation has extended earned leave from 240 to 300 days and in some matters to its employees leave encashment (EL) have been paid and the same proof of payments to co-employees are filed as documents in support of their contentions.

[50] Learned Advocate General to this has submitted that the payment which is made by the respondent-corporation in respect of seven persons was not voluntary but the same was under compulsion because of pendency of the contempt case but was not *suo moto* and the same cannot be taken as precedent.

[51] Heard both sides. Admittedly, the petitioners served under the respondent-TRTC corporation at various levels and beings its employees are claiming gratuity and the cash towards their earned leave. To appreciate the case it is necessary to examine certain definition like salary, pay and allowance earned leave. The benefit of leave encashment is nothing but payment of salary for the leave earned and credited but not availed by an employee. An employee is entitled to leave salary for un-availed leave to a maximum limit of 300 days. It is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit. For the purpose of reference, certain definition may be reproduced hereunder:

“Earned Leave for Government servants serving in Department other than Vacation Department:

Earned leave shall be credited to the leave Account of a Government servant, who is serving in a Department other than a Vacation Department at the rate of 2½ days for each completed calendar month of service which he is likely to render in a half year of the calendar year in which he comes under the provision of these rules or in which he is appointed as the case may be. The Leave Account shall be credited with earned leave in advance in two instalments (of 15 days each in case of two full half-years) on the first day of January and July every calendar year.

["provided that the non-gazetted TSR personnel shall be allowed to exercise option either to the entitlement of existing Special Compensatory Allowance or crediting of additional 30 (thirty) days Earned Leave in a calendar year subject to total limit of 300 days during whole service. The credit of additional leave shall be made in the manner as stipulated in Rule 25(1)".]

(b) The leave at the credit of a Government servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that the leave so carried forward plus the credit for the half year do not exceed the maximum limit of [300]² days.

(c) A period spent in foreign service shall count as duty for the purpose of this rule, if contribution towards leave salary is paid on account of such period.”

Leave/Cash payment in lieu of leave beyond the date of retirement or quitting of service-

(a) The date of his retirement, or

(b) The date of his final cessation of duties, or

(c) The date on which he retires by giving notice to the Government or he is retired by Government by giving him notice or pay and allowances in lieu of such notice, in accordance with the terms and conditions of his service, or

(d) The date of his resignation from service.

(2) (a) Where a Government servant retires on attaining the normal age prescribed for retirement under the terms and conditions governing his service, the authority competent to grant leave shall suo moto issue an order granting cash equivalent of leave salary for earned leave, if any, at the credit of the Government servant on the date of his retirement subject to a maximum of (300) days.”

Leave Salary: A Government servant who proceeds on earned leave is entitled to leave salary equal to the pay drawn immediately before proceeding on earned leave.

Drawal of leave salary: The leave salary payable under these rules shall be drawn in rupees in India.”

Pay and Allowances in Section-29 read with the wider definition of the word ‘salary’ in Section-2(r) of the Act has a very wide connotation. We have come to the conclusion that the expression includes benefit of leave encashment which is nothing but salary for the un-availed leave to the credit of the employee.

[52] In that view of the matter let us discuss Rule-25(1)(b) and Rule-35(2)(a) of 1967 Rules for ready reference.

“Rule-25(1)(b) provides, that, the leave at the credit of a Govt. servant at the close of the previous half year shall be carried forward to the next half year, subject to the condition that , the leave so carried forward plus the credit for the half year do not exceed the maximum limit of 300 days.

Rule-35(2)(a) provides, that ,where a Govt. servant retires on attaining the normal age of superannuation, the authority competent to grant leave shall *suo moto* issue an order granting cash equivalent of leave salary for earned leave, if any, at the credit of the Govt. servant on the date of his retirement subject to maximum 300 days. Rule-35(2) (b) further provided, that cash equivalent under clause (a) shall be calculated and shall be payable in one lump sum as one time settlement.”

[53] When they rendered their service, the respondent-corporation is obligated to pay. So, when they are entitled for equal pay for equal work on

any pretext the respondent cannot deny. A harmonious reading of Rules and the notification dated 12th May, 1972, may be reproduced hereunder:

“A Govt. of Tripura undertaking

No. F.15(3)-TRTC/71/1375 (A)

Dated, 12th May, 1972

NOTICE

It is hereby notified for the information of the employees of Tripura Road Transport Corporation that as per decision taken by the Corporation all Government Rules will apply to Tripura Road Transport Corporation until framing of rules by the Corporation and any violation of Government Rules will be deemed as indiscipline and will be seriously dealt with.

S/d R.N. Chakraborty
12.05.72
General Manager.”

[54] TRTC has recognized the entitlement of its employees under the rule to have earned leave. To meet the argument of learned Advocate General that earned leave is granted but leave encashment is not indicated in the TRTC Act and Rules and thus, the petitioners ought to have availed their earned leave without claiming for leave encashment, cannot be appreciated as it is a settled principle that whenever there is inconsistency between central Act and the regulation framed by the corporation or by State Act, the central Act would prevail and will have an overriding effect.

[55] In the present case, expressly in the notification dated 12th May, 1972 indicates that all State rules as stated (supra) to the corporation and insofar as the said TRTC Act and Rules are concerned, there is no expressed Rule providing or dealing with leave encashment to its employees. Chapter-7 [TRTC Rules/Act] only deals with Chief Executive and General Manager their salary and service benefits and thus, it cannot be made applicable to the other employees. So there is no inconsistency and since the provision pertaining to leave encashment are silent in the TRTC Act and Rules, Tripura Civil Services Rule would apply.

[56] Now, coming to the reference made by the learned Advocate General, a judgment of this Court [WA. No.218 of 2022] and the author of

this judgment was this Court [Justice T. Amarnath Goud] wherein, the Court has observed that:

“[12] Upon hearing the submissions made by the learned counsel appearing for the parties and on perusal of record, this Court is of the view that violation of doctrine of recording (opportunity of personal hearing not been given) and violation of principles of natural justice as pointed out by the appellant is not applicable in the present case since no right of the appellant has been infringed by the respondent in passing an order dated 28.08.2020 and thus, the question of issuing a notice before passing an adverse order does not arise to the facts of this case as the same is passed considering the representation of the pensioners as per the direction of this Court. On the point of discrimination, Article 14 of the Constitution of India will not have a role to play since the pensioners before this Court belong to different associations/corporate bodies and it is not the case that they all are maintaining the equality with all other organizations under the State government. It is not the case of the appellant that some employees in one of their organizations are being extended the benefit of pension and some were denied. Hence, the case of the appellant does not come under the Article 14 of the Constitution of India and it is not a case of discrimination.

13. This Court cannot compel the Government in issuing a mandamus to frame any policy or a scheme as the same is not in the domain of Article 226 of the Constitution of India but, it is purely on the welfare State to frame any such policy.”

[57] In the case cited (supra) in absence of policy no relief was granted to the petitioners. The Court in Article-226 cannot be directed the State Government to frame a policy as the same is not within the domain of the judiciary. In the present case also it is not that the fact that the policy needs to be made for making payment of leave encashment wherein, it is already subsisting statute under the Tripura Civil Services Rules which needs to be extended to the employees of the corporation in the light of the notification dated 12th May, 1972.

[58] Since the TRTC has not issued any Gazette notification in adopting any rule in this regard the employees of the corporation cannot be deprived of for non-performance of any obligatory duty by the corporation in not issuing any Gazette notification. In absence of any relief that would be granted to the employees for leave encashment, the notification dated 12th May, 1972 which expressly indicates that all State government Act and rules would apply in the light of the notification dated 12th May, 1972 and Tripura Civil Services Rules would apply to the employees of the corporation. It

cannot be said that the employees are entitled for earned leave but not entitled for its leave encashment.

[59] The respondent-corporation at least could have indicate to its employees on the said issue to say that they are entitled for earned leave but not for encashment as the regulations are silent and also could have expressly indicate in the TRTC Act or Rules. On the other hand, the respondents have paid leave encashment amount to some of the employees which is not disputed but the argument of the learned Advocate General that because of contempt cases were filed some of them were paid the amounts. This argument cannot be appreciated as nothing prevented the corporation to challenge the said order passed in the writ petition or even in the contempt proceeding.

[60] In view of above discussion, this Court is of the considered view that Article-14 of the Constitution of India would come into play and the action of discrimination by the transport corporation in making payment, depriving others has no weight-age and cannot be appreciated and the same is discriminatory.

[61] A fair reading of the impugned order clearly indicates that the Managing Director of TRTC addressed to the finance department. In view of this, it is construed that TRTC is interested to pay the amount but they are not in a position to meet the financial stringencies/burden and depends on State government. Mr. S. Bhattacharjee, learned counsel has submitted a letter dated September, 08.09.2023 obtained through RTI it is also seen from the said letter which is placed on record that TRTC addressed a letter to the Finance Department indicating need of rupees 14,17,31,141/- to settle the leave encashment demand made by its employees and prayed for providing financial assistance. For the purpose of reference the same may be reproduced hereunder:

**“TRIPURA ROAD TRANSPORT CORPORATION (A GOV. OF
TRIPURA UNDER TAKING) AGARTALA:: TRIPURA**

To The Secretary,
To the Government of Tripura,
Transport Department Agartala.

Subject: Requisition of fund amounting Rs. 14,17,31,141/-(Rupees Fourteen Cror. seventeen lac thirty one thousand one hundred forty one) only for payment of Leave encashment to the retired Employees of TRTC in reference to the Judgement and order of the Hon'ble High Court of Tripura dated 26.08.2021 and 06.12.2022.

Reference: This office letter vide No.F. 1(24)-TRTC/Gen/Leave Encashment 2022/868 dated 13.12.2022 and subsequent reminder No. F. 1(24)-TRTC/Gen/Leave Encashment 2022/206-11/date 01.06.2023, regarding request for making payment of leave Salary.

Sir, In inviting reference to the discussion held between the Hon'ble Minister Transport, Food and Civil Supplies etc. Department, Govt. of Tripura, Agartala and the Hon'ble Chairman, TRTC, Vice Chairman, TRTC where your good self was also present in the office Chamber of the Hon'ble Minister on 14.08.2023, regarding release of fund for payment of leave Salary to the retired employees/workers of TRTC. During discussion the Hon'ble Minister desired to re-submit the matter again to your office for consideration of the Government towards release of fund amounting Rs.14,17,31,141/-(Rupees Fourteen Crore seventeen lakh thirty one thousand one hundred forty one) only for payment of leave salary to the retired employees of TRTC.

Under the above facts, I am submitting the proposal afresh to your good office for consideration and doing the needful from your end for releasing the said fund.

Further, I am to state that a good number of retired employees have already filed wrn petition to the Heable High Court of Tripura demanding leave salary against their unutilized leave which was due to them at the time of retirement. The Hon'ble High Court also passed order in many cases asking the respondent se. MD, TRTC, for consideration of their petition, But due to financial insolvency of TRTC, the leave salary could not be paid to them and there have been a lot of contempt Court Cases currently pending in the Hon'ble High of Tripura.

It is to state that, as per Judgement of the Hon'ble High Court of Tripura vide order No. Cont. Case (C) 25 of 2022 date.06.12.2022 leave salary amounting of Rs.3,70,423/- has been paid to 4 (four) retired employees namely Sri Bhuban Ch. Das, Ex-T/S, Sri Hiranmoy Bagchi, Ex-Bus Conductor, Sri Kirit Kanti Bhattacharjee, Ex-T/S, and Sri Ajoy Bhattacharjee, Ex-Bus Conductor in the month December 2022. Thereafter, no leave salary is paid to any to any other retired employees of TRTC due to financial hardship/CrisisMt is pertinent to mention here that leave salary is a part of the salary, At present, the total amount of salary and Gratuity of the employees of TRTC is being paid from the consolidated fund of the State Government from time to time, If the State Government do not release fund for making payment of leave salary, TRTC has no source of fund to release the leave salary to even a single retired employees out of its own source of revenue.

For payment of leave salary to the retired employees of TRTC an amount of Rs. 14,17,31,141/- (Rupees Fourteen Cror. seventeen lakh thirty one thousand one hundred forty one) only would be required for 3(three) categories of employees. The details of employees may kindly be perused in the statement vide Annexure "A" which is enclosed herewith.

In view of the above, I would request you to kindly consider the matter and do the needful for releasing fund amounting Rs 14,17,31,141/- (Rupees-Fourteen Crore seventeen lakh thirty one thousand one hundred forty one) only to TRTC, so that TRTC can make payment of leave salary to the retired employees.

Yours Faithfully,
Managing Director, TRTC, Agartala.”

[62] Monthly salary is paid for an employee for rendering his service for a period of 30 days and for a year annual salary. The earned leave is derived out of his 30 working days. Leave encashment of earned leave becomes integral part of the working days and salary. Since, petitioners served for the above period are entitled for pay. On one hand the TRTC is affirming the rights of the petitioners and requested the Govt. to provide funds and on the other hand prays to dismiss the writ as they are not entitled. The stand of the TRTC is inconsistent and the argument advanced by State through the learned Advocate General and TRTC through the standing counsel Mr. K. C. Bhattacharjee is contradicting to each other. The counter affidavit of TRTC also supports the case of the petitioners. Learned Advocate General argued that committee constituted in pursuance of the orders of the Court has recommended TRTC to give leave encashment from its own sources. Thus, TRCT can consider granting leave encashment to its employees.

[63] But for any issue between the TRTC and the State respondent, the employees of the corporation cannot be deprived of their legitimate rights and from the above mentioned letter dated 08.09.2023 submitted by Mr. S. Bhattacharjee, learned counsel for the petitioners that TRTC is ready to pay the leave encashment amount to the employees who rendered their service with utmost dignity but for the financial disability the process could not be carried out by the TRTC. Thus, this Court is of the conscious view that the petitioners are entitled for leave encashment.

[64] In view of the above discussion, the writ petitions are allowed declaring the petitioners entitled for the leave encashment and there shall be a direction to the TRTC respondents herein, to look into the matter and settle the claim of the petitioners as expeditiously as possible preferably within a period of six months from the date of receipt of the copy of this order. In default, the petitioners may avail remedies before the competent Civil Court for recovery of the said amount.

[65] With the above observations and directions, the present petitions stands allowed and disposed of. As a sequel, miscellaneous application pending, if any, shall stand closed.

T. AMARNATH GOUD, J

A.Ghash

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