

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.290 OF 2021**

1. Tripura Apex Fishery Co-operative Society Ltd.,
College Tilla, Fishery Office Complex, Agartala, Pin-799004,
Represented by its Executive Officer.

2. Executive Officer,
Tripura Apex Fishery Co-operative Society Ltd.,
College Tilla, Fishery Office Complex,
Agartala, Pin-799004.

..... **Appellant(s)**

Versus

1. Shri Gouranga Chandra Das,
Son of Lt. Shital Das,
Of Adarsha Colony, P.O.- Jogendranagar,
P.S.- East Agartala, District-West Tripura.

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

2. The State of Tripura,
Represented by
The Secretary to the Government of Tripura,
Department of Fisheries, P.O.- Kunjaban, P.S.- New Capital
Complex, District- West Tripura, Agartala-799006.

3. Director, Department of Fisheries,
Government of Tripura, P.O.-Kunjaban,
P.S.- New Capital Complex, District-West Tripura,
Agartala-799006.

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

For the Appellant(s) : Mr. G.K. Nama, Advocate.

For the Respondent(s) : Mr. S. Lodh, Advocate.
Mr. K. De, Addl. G.A.
Mr. K. Pandey, Advocate.

Date of hearing : 27.02.2024.

Date of delivery of
Judgment & Order : 11/03/2024

Whether fit for reporting : YES.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT
J U D G M E N T & O R D E R**

(T. AMARNATH GOUD,J)

This present writ appeal has been filed under Rule 2, Chapter V-A of the Gauhati High Court Rules against the Judgment and Order dated 03.02.2021 passed in WP(C) No.1216 of 2019.

2. The brief fact of this case is that the 1st respondent herein is the writ petitioner who served the Appellant/respondent Tripura Apex Fishery Co-Operative Society Ltd.,(referred to as 'society') as a Group-D employee from 01.07.1981 until his superannuation on 30.04.2016. The writ petitioner on retirement from the service of the 'Society' bore a grievance that the gratuity paid to him is not according to law as he is entitled to gratuity calculated in terms of the provisions of Payment of Gratuity Act, 1972.

3. Before filing the impugned WP(C) No.1216 of 2019, the petitioner herein filed an earlier writ petition being WP(C) No.605 of 2017 seeking direction upon the State-respondent to pay a sum of Rs.4,24,110/- as the balance of the gratuity with statutory

interest w.e.f. 01.06.2016. Vide Judgment dated 10.08.2018, the earlier writ petition was disposed of. The relevant portion of the said Judgment and Order are as under:-

"7. This court find further substance in the submission that the delay being not attributable to the petitioner and his entitlement from the day one is not disputed by the respondents that certainly make him entitled for interest on the amount of gratuity remain unpaid @ 9% from the date it became due and payable in terms of Section 7(3A) of the Payment of Gratuity Act, 1972.

8. Consequently, writ petition is disposed of with a direction to the respondents to make payment of the balance sum towards gratuity of Rs.1,55,755/- along with interest @ 9% from the date it became due until actual payment with the liberty to the petitioner to claim actual entitlement as claimed under the Payment of Gratuity Act, 1972 by adopting the mechanism provided under the law. No costs."

4. The said Judgment dated 10.08.2018 has not been challenged or questioned by the State. Accordingly, the said judgment has reached its finality.

5. The petitioner then filed the impugned writ petition No. WP(C)1216 of 2019 with a prayer of calculating his gratuity in terms of the provisions of the Payment of Gratuity Act, 1972. The Society resisted the claim on the ground that the employer 'Society' does not come under the said Act and the writ petitioner is entitled to the gratuity in terms of the 'Bye-Law' of Tripura Apex Fishery Co-operative Society.

6. The learned Single Judge decided that the respondent 'Society' is an 'establishment' with the meaning of the Payment of Gratuity Act, 1972 and his gratuity has to be calculated in terms of Section 4(2) of the said Gratuity Act. The relevant

portion of the said Judgment and Order dated 03.02.021 is produced here-in-under:-

"Thus, it is clear that the employees who have been holding the post either in the Central Government or the State Government can be subjected to the regulation in payment of the gratuity and in their case, the Payment of Gratuity Act may not have any relevance if the regulation so framed by the Central Government or the State Government provides differently.

The respondents No.3 & 4 have admitted that the respondent No.3 is an establishment within the meaning of Payment of Gratuity Act, 1972. That apart, Mr. Das, learned counsel in response to a query from this court has admitted that the Society is carrying out its commercial operation. Thus, there cannot be any amount of confusion in respect of the status of the respondent No.3. The respondent No.3 is an establishment under the Payment of Gratuity Act, 1972.

Having observed thus, this court is of the view that the last „wage“ is not the basic pay of the petitioner. His gratuity shall be calculated in terms of Section 4(3) of the Payment of Gratuity Act, 1972. Such computation be made by the respondents No.3 & 4 within a period of 30 days from the day, on which, the petitioner shall furnish a copy of this order. The remainder of the gratuity, if any, shall be paid to the petitioner by another 2[two] months from the date when such computation will be published by the respondents No.3 & 4. It is made clear that if there emerges further entitlement in favour of the petitioner, the said remainder shall carry interest @7% from the date after expiry of 30 days from the date of retirement of the petitioner in terms of Section 7(3A) of the Payment of Gratuity Act, 1972.

In terms of the above, this writ petition stands disposed of.

It is observed that the quantum of the basic pay was not in controversy in the previous writ petition and on the face of unilateral statement made by the respondents No.3 & 4, the direction was issued in the earlier writ petition. The observation as regards the basic pay stands modified. The „wage“ would be determined as per records.

There shall be no order as to costs."

7. Being aggrieved by said Order dated 03.02.2021 passed in WP(C) No.1216 of 2019, the respondent 'Society' has filed this present appeal seeking the following reliefs:-

"The relief prayed for before the Hon'ble Appellate Court is to quash the order of the Ld. Single Judge In WP(C) No.1216 of 2019 and declare that the employee of appellant society has no legal obligation to pay gratuity in terms of the payment of gratuity Act, 1972. All that the employer society is to pay as gratuity to its employee is not terms of clause 15(v) of the by-laws of the society which has already been paid to the respondent employee

AND

Grant such relief under law as may be available to the appellants."

8. Heard Mr. G.K. Nama, learned counsel appearing for the respondent-Appellant '*Society*' as well as Mr. S. Lodh, learned counsel assisted by Mr. K. Pandey, learned counsel appearing for the petitioner-respondent and Mr. K. De, learned Addl. G.A., appearing for the proforma-respondent State.

9. Mr. S. lodh, learned counsel appearing for the petitioner-respondent put forth his argument on the entitlement of Gratuity by his client. In this regard, he referred to **Section 1 Sub Section (3)(c)** of the **Payment of Gratuity(Central) Rules, 1972.**

The same is produced herein under:-

"1.(3)(c) such other establishment or class of establishment, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

Learned counsel submitted that in terms of this Section, '*Co-operative society*' comes into the perview of this Section.

Amid the argument, this Court put a question whether the '*Co-operative society*' has adopted any rule, and if adopted what will be the effect. To this query, Mr. Lodh, learned counsel contented that it has not adopted, but, however, he

referred to Section 14 of **Payment of Gratuity(Central) Rules, 1972.**

The same is produced here-in-under:-

"14. Act to over ride other enactment, etc,- The Provision of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

Thereafter again on the point of adoption of own rule of payment of Gratuity, Mr. Lodh, learned counsel referred to **para-7, 8, 9, 10 and 11** of the Hon'ble Apex Court Judgment reported in **(2019) 6 SCC 103** titled as **Nagar Ayukt Nigam, Kanpur Vs. Mujib Ullah Khan and anr.**

The same is produced here-in-under:-

"7. On the other hand, learned counsel for the respondent pointed out that the Central Government has published a notification in terms of [Section 1\(3\)\(c\)](#) of the Act on 08.01.1982 to extend the applicability of the Act to the Municipalities. Thus, the Act is applicable to the Municipalities. The relevant provisions of the Act read as under:

"1. Short title, extent, application and commencement.-

(1) [This Act](#) may be called the [Payment of Gratuity Act, 1972](#).

(2) It extends to the whole of India:

Provided that in so far as it relates to plantations or ports, it shall not extend to the State of Jammu and Kashmir.

(3) It shall apply to-

(a) every factory, mine, oilfield, plantation, port and railway company;

(b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;

(c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf."

8. A perusal of the above provisions would show that the Act is applicable to (1) every factory, mine, oilfield, plantation, port and railway company; (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions, viz. (i) a

shop or establishments within the meaning of a State law and (ii) in which ten or more persons are employed; and (3) the establishments or class of establishments which Central Government may notify.

9. The appellant is not covered by clauses (a) and (b) of Section 1.(3) of the Act. Clause (a) is not applicable on the face of the provisions, but even clause (b) is not applicable in view of Section 3 (c) of the 1962 Act as such Act is not applicable to the offices of the Government or local authorities. The Local Authorities means a municipal committee, district board etc or entrusted with the control or management of a municipal or local fund in terms of Section 3(31) of the General Clauses Act, 1897.

10. In terms of the above said [Section 1\(3\)\(c\)](#) of the Act, the Central Government has published a notification on 08.01.1982 and specified Local Bodies in which ten or more persons are employed, or were employed, on any day of the preceding twelve months as a class of establishment to which this Act shall apply. The said notification dated 08.01.1982 reads as under:-

" New Delhi, the 8 th January, 1982 NOTIFICATION S.O. No. 239....-In exercise of the powers conferred by clause (c) of sub-section (3) of [section 1](#) of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified 'local bodies' in which ten or more persons are employed, or were employed, on any day preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette.

Sd/.

(R. K. A. Subrahmanya)

Additional Secretary

(F. No. S-70020/16/77-FPG)"

11. We find that the notification dated 08.01.1982 was not referred to before the High Court. Such notification makes it abundantly clear that the Act is applicable to the local bodies i.e., the Municipalities. [Section 14](#) of the Act has given an overriding effect over any other inconsistent provision in any other enactment. The said provision reads as under:

"14. Act to override other enactments, etc. – The provisions of this Act or any rule made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument or contract having effect by virtue of any enactment other than this Act."

After quoting the above, the learned counsel submits that in view of the notification placed by him, his client comes under the perview of Section 1 sub Section 3 of the Act. Even if the 'society' has made its own Rule for payment of Gratuity, Section 14 of the 'Act' has an overriding effect.

Learned counsel further submitted that respondent-appellant 'Cooperative Society' admitted that they are 'establishment' within the meaning of Payment of Gratuity Act, 1972. In respect to this argument, learned counsel referred to below-mentioned paras of the impugned order dated 03.02.2021:-

"The respondents No.3 & 4 have admitted that the respondent No.3 is an establishment within the meaning of Payment of Gratuity Act, 1972. That apart, Mr. Das, learned counsel in response to a query from this court has admitted that the Society is carrying out its commercial operation. Thus, there cannot be any amount of confusion in respect of the status of the respondent No.3. The respondent No.3 is an establishment under the Payment of Gratuity Act, 1972."

Stating thus, learned counsel submitted that as per law, payment of the Gratuity Act, 1972 is applicable in the case of his client.

10. To counter the said argument, Mr. G.K. Nama, learned counsel appearing for the respondent contended that the recording of facts by the learned Judge is not correct and referred to *Para-5* of their affidavit in opposition wherein it is stated thus:-

" That with regard to the averments made in para-3 of the petition, I say that the Gratuity Act is not applicable to the respondent society. The society follows its own decision in paying the amount of gratuity and determines the amount of gratuity of an employee as per rule-9 of the Tripura State Civil Services(Revised Pension) Rule 2017 As per the rule the formula for determination of gratuity is ½ half of emoluments for every completed 6(six) monthly period of qualifying service subject to a maximum of 22 time of emoluments."

Submitting this, learned counsel stated that the 'Co-operative Society' is not an establishment and the 'Act' is not applicable to the 'Society'.

On the query of the Court that whether the Co-operative society is not an '*establishment*' in terms of Section 1.(C) of the Act, and if not what is its legal status, Learned counsel stated that the definition of '*establishment*' is given under the Shop and Establishment Act, Tripura 1972. The same is produced here-in-under:-

"(e) "establishment" means a commercial establishment or an establishment for public entertainment or amusement;

(f) "establishment for public entertainment or amusement" means a hotel, restaurant, eating-house, cafe, cinema, theatre and includes such other cases or classes of concerns or undertakings as the Administrator may, after taking into consideration the nature of their work, by notification, in the Tripura Gazette, declare to be, for the purposes of this Act, establishments for public entertainment or amusement, but does not include a shop or a commercial establishment;

On the query of the Court why the '*Society*' is following the Tripura State Civil Services(Revised Pension) Rule 2017, Mr. Nama, learned counsel stated Section 15 of the '*Bye Law*' of *Tripura Apex Fishery Co-operative Society*. The same is produced herein under:-

"15. Pay and allowances and other concession:

1) The Managing Committee shall be the competent authority to adopt Pay and allowances and concessions as provided by the Govt. of Tripura for the employees of Tripura Apex Fishery Co-operative Society Limited provided that approval from Fishery Department may be obtained before allowing the pay Scale and allowances xxxxxxxxxxxxxxxxxxxx

v.The employee's of the society shall be entitled to get LTC, Gratuity and Leave salary as admissible to the employee's of Govt. of Tripura, provided that the L. T. C. and Leave salary of the employee's will be considered on the basis of availability of fund."

Stating thus, learned counsel submitted that it is their guidelines and they follow the same. Learned counsel

submitted that his client is not an 'establishment' and it is a weaker section welfare cooperative society for the betterment and upliftment of the downtrodden who are its members and doing fishing as their professions and is not obligated to pay gratuity in terms of the Payment of Gratuity Act, 1972.

11. On the point that they are not challenging the Central Govt. Notification dated 20th August 1997 and view of Section 14 of the 'Act' it has the overriding effect and there is no need to challenge the same, Mr. Lodh, learned counsel appearing for the petitioner referred to below mentioned relevant paras of Division Bench Order of this Court passed on **29.01.2021** titled as **WA No.185 of 2020** between the **Agartala Municipal Corporation and Sri Samir Kumar Ghosh and ors:-**

"Mr. Deb, learned senior counsel appearing for the Municipal Corporation-appellants has submitted that the writ petitioner, the respondent No.1 herein had retired from the service on 31.12.2015 as the Head Clerk. Within time, his gratuity had been paid following the notification No.F.8(3)-FIN(G)09 dated 05.05.2009 issued by the Finance Department declaring the maximum ceiling of retirement gratuity @ Rs.4,00,000/-.

On the basis of the said notification which was adopted by the Municipal Corporation-appellant, the due gratuity had been paid to the petitioner. But the petitioner has challenged the decision of the Municipal Corporation-appellant by stating that the amount of gratuity would be determined by Section 4(3) of the Payment of Gratuity Act, 1972 inasmuch as Agartala Municipal Corporation is an establishment within the definition of Section 1(3)(c) of the Payment of Gratuity Act, 1972.

It is not in dispute that the Central Government having due regard to the Section 1(3)(c) of the said Act has published a notification on 08.01.1982 and the said notification as referred above provides as follows:-

"S.O. No.239....In exercise of the powers conferred by clause © if sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified "local bodies" in which ten or more persons are employed, or were employed, on any day preceding

twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."

Thus, there cannot be any amount of dispute that Agartala Municipal Corporation comes within the establishment, in terms of Clause-C of sub-Section 3 of Section 1 of the Payment of Gratuity Act, 1972.

Mr. S. Deb, learned senior counsel has contended that by means of Tripura Municipal Act, 1994, the municipal bodies have their authority to determine pay and allowances, pension and gratuity. However, no such specific provision has been referred to. As stated, the Municipal Corporation has adopted the said notification dated 05.05.2009. That apart, Mr. Deb, learned senior counsel has submitted that since Agartala Municipal Corporation has adopted its own rule of Payment of Gratuity Act, the provisions of Payment of Gratuity Act, 1972 will not apply to its employee. In support of his contention Mr. Deb, learned senior counsel has referred a decision of the apex court in Nagar Ayukt Nagar Nigam, Kanpur vs. Mujib Ullah Khan and Another reported in (2019) 6 SCC 103 the passages as follows have been highlighted:-

"8. A perusal of the above provisions would show that the Act is applicable to (1) every factory, mine, oilfield, plantation, port and railway company; (2) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, the said provision has two conditions, viz. (i) a shop or establishments within the meaning of a State law and (ii) in which ten or more persons are employed; and (3) the establishments or class of establishments which Central Government may notify. 9. The appellant is not covered by clauses (a) and (b) of Section 1(3) of the Act. Clause (a) is not applicable on the face of the provisions, but even clause (b) is not applicable in view of Section 3 (c) of the 1962 Act as such Act is not applicable to the offices of the Government or local authorities. The Local Authorities means a municipal committee, district board etc or entrusted with the control or management of a municipal or local fund in terms of Section 3(31) of the General Clauses Act, 1897."

According to Mr. Deb, learned senior counsel, having due regard to the pedagogy of the powers, repugnance will not apply in the present case.

We are unable to accept that analogy inasmuch as the Payment of Gratuity Act while defining employee by Section 2(e) has provided that employee means any person (other than an apprentice) employed on wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

This exception has been carved out is for the Central Government and the State Government, who have their independent source of power to frame any Act or rules for their own employees. In that case, in respect of those employees, the provision of Payment of Gratuity Act will not apply.

Admittedly, the writ petitioner is not an employee of the Central Government or State Government but of a local body. As such the said exception as carved out while defining 'employee' cannot authorise

Agartala Municipal Corporation (the appellant) to make their own rules which is in contrast to the provisions of Central Statute namely the Payment of Gratuity Act, 1972 inasmuch as the Central Government has notified that local bodies having employees more than ten would be covered by the provisions of Payment of Gratuity Act, 1972."

However, on the query of the Court, Mr. Lodh, learned counsel appearing for the petitioner submitted that there is no impugned order of the respondents under challenge.

12. Heard both sides and perused the evidence on record.

13. Before discussing the merit of the case, let us first produce the Central Govt. notification dated 20th August 1997 that deals with trust, society and cooperative society. The same is produced here-in-under:-

*"New Delhi, the 20th August, 1997
S.O. 2218. In exercise of the powers conferred by clause (c) of sub-section 3 of section 1 of the Payment of Gratuity Act, 1972 (39 of 1972). the Central Government hereby specifies the trusts or societies, registered under the Societies Registration Act, 1860 (21 of 1860), or under any other law with respect to societies for the time being in force in any State, in which ten or more persons are employed or were employed for wages on any day of the preceding 12 months as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."*

14. Here in we may incorporate Section 1 of The Societies Registration ACT, 1860, wherein it deals with society formed by memorandum of association and registration:-

1. Society formed by memorandum of association and registration.- Any seven or more person associated for any literary, scientific or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with the Registrar of Joint-stock Companies formed themselves into a society under this Act.

15. In Section-1 of the 'Bye-law' of the Tripura Apex Fishery Co-operative-Society (First Amendment 2009), the name, address and area of Operation are stated as under:-

i. The Tripura Apex Fishery Co-operative Society Ltd. is registered as Co-operative Society under Tripura Co-operative Society Act, 1974. Its address shall be at Agartala, Tripura.

ii. It's area of operation shall be confined to the whole of Tripura State.

iii. Any change in the Address shall be notified to the Registrar Co-operative Societies, Tripura within 15 days of such change.

16. Let us also examine the meaning of 'establishment' as given in The Law Lexicon, Fifth Edition:-

'Establishment' means any places or premises, including the precincts thereof, in which or in any part of which any scheduled employment is being or is ordinarily carried on. [Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act 30 of 1969) S. 2(4) as cited in Pepsico India Holding Private Limited v. Grocery Market and Shops Board, (2016) 4 SCC 493, para 8].

ESTABLISHMENT means an organization which employs persons, between whom and the establishment, the relationship of employee and employer comes to exist. V. Transport (P) Ltd. v. R.P.F. Commissioner, AIR 1965 Mad 466, 467. [Employees Provident Fund Act (19 of 1952), S. 16 (As amended in 1960)]

17. The definition of 'establishment' as per the Oxford dictionary is as under:-

"Establishment:-1) an organization, a large institution or a hotel. 2) the people in a society or a profession who have influence and power and who usually do not support change. 3) the act of starting or creating sth that is meant to last for a long time.

18. The definition of 'establishment' as per The Shop and Establishment Act, 1970 is as under:-

"(e) "establishment" means a commercial establishment or an establishment for public entertainment or amusement;

(f) "establishment for public entertainment or amusement" means a hotel, restaurant, eating-house, cafe, cinema, theatre and includes such other cases or classes of concerns or undertakings as the Administrator may, after taking into consideration the nature of their work, by notification, in the Tripura Gazette, declare to be, for the purposes of this Act, establishments for public entertainment or amusement, but does not include a shop or a commercial establishment;

19. Here we may also produce the meaning of 'wages' as given in the Law Lexicon, Fifth Edition:-

"Wages. A compensation or remuneration given to a hired person for his or her service. [S. 2(rr), Industrial Disputes Act (14 of 1947)]. The price or money paid for labour. Agreement between group of persons for payment of money as between themselves on the happening of an event though they are not personally interested and have no control on the happening of that event.

'Wages' means remuneration, which an employer is liable to pay, if the terms of the contract of employment are fulfilled. As the amount of maternity benefit is payable even if the terms of employment are not fulfilled, it cannot be said to be wages within the meaning of this term given in the Payment of Wages Act (4 of 1936), S. 2(vi). Ganpatlal Mulchandji Joshi v. First Civil Judge, Class 1. AIR 1958 Bom 262, 264."

20. The definition of 'wages' as given in the Oxford Dictionary is as under:-

" wage- a regular amount of money that you earn, usually every week, for work or services.

21. The definition of 'wages' as given in the Shop and Establishment Act, 1970 is as under:-

" Wages" means wages as defined in the Payment of Wages Act, 1936'.

22. The definition of 'wages' as given in the Payment of Wages Act, 1936 is as under:-

"[(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-

(a) any remuneration payable under any award or settlement between the parties or order of a Court;

(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;

(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;

(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,

but does not include-

(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a Court;

(2) the value of any house-accommodation, or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages by a general or special order of ¹[the appropriate Government];

(3) any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon:

(4) any travelling allowance or the value of any travelling concession:

(5) any sum paid to the employed person to defray special expenses entailed on him by the nature of his employment; or

(6) any gratuity payable on the termination of employment in cases other than those specified in sub-clause (d).]"

23. The definition of 'wages' as given in Section 2 of the Payment of Gratuity Act, 1972 is given as under:-

"s) "wages" means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employment and which are paid or are payable to him in cash and includes dearness allowance but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances."

24. It is a settled principle of law that the admitted fact need not be put to the test of proof. As seen from the record and as admitted by the 'Society', it is an 'establishment' and the petitioner is its employee and he had served for a considerable period. Now since the relationship as an 'employee' and the 'employer' is not in dispute and the status of the society is also not in dispute, thus the issue of the entitlement of the petitioner for claiming gratuity is the issue that falls for consideration.

25. It is the case of the 'Society' that it is following the Tripura State Civil Services (Revised Pension) Rule and accordingly, the 'Society' follows Clause No.15 of the 'bye-law' of the Tripura Apex Fishery Co-operative Society and the gratuity amounts have been calculated and the same have been disbursed to the

petitioner. Clause-15 of the Tripura Apex Fishery Co-operative Society 'Bye-law' is again extracted here for convenience:-

"15. Pay and allowances and other concession:

1) The Managing Committee shall be the competent authority to adopt Pay and allowances and concessions as provided by the Govt. of Tripura for the employees of Tripura Apex Fishery Co-operative Society Limited provided that approval from Fishery Department may be obtained before allowing the pay Scale and allowances.

ii) Provided that if the Society has incurred loss or has accumulated losses in the Account, the Managing Committee shall not increase the Scale of Pay or any allowances sanction by the Govt. of Tripura...

iii) Promotion, Annual Increment, Travelling Allowance:

The Society will be followed the Rules and Regulations as provided to the Employees of Govt. of Tripura.

Liveries and washing allowance may also be paid to the Employees of Society as admissible to State Gov. Employees.

iv) The Employees of the Society: shall be entitled to Festival Advance/Festival Grant as admissible to the Employees of Govt. of Tripura. Provided that this will be considered on the basis of availability of fund.

v) The employee's of the society shall be entitled to get LTC, Gratuity and Leave salary as admissible to the employee's of Govt. of Tripura, provided that the L. T. C. and Leave salary of the employee's will be considered on the basis of availability of fund."

26. The present litigation has arisen from the inception of WP(C) No.605 of 2017 and its subsequent disposal on 10.08.2018, wherein, the learned Judge has considered the case in its entirety and decided that the petitioner be paid gratuity as per the provisions of the Payment of Gratuity Act, 1972. The said Judgment has become final as no appeal has been preferred by the 'Society'.

27. In pursuance thereof, the respondent-Society has computed the amounts and disbursed the same to the petitioner

and the petitioner has accepted the same. However, having received the said amounts, the petitioner has again challenged the action of the respondents to say that the computation has been made by the '*Society*' in terms of the Tripura State Civil Services (Revised Pension) Rule by following clause No.15 of the '*bye-law*' of the Tripura Apex Fishery Co-operative Society, but not under Payment of Gratuity Act, 1972 and claimed to make the said payment as the petitioner is entitled to some more amounts. It is also a settled principle that when an issue is to be decided in the absence of any State or Central Act, the matter would be dealt by following the 'bye-laws' from the regulation of the local body. In the event if the regulations of the local body and the existence of the State Act/Rules are prevailing, definitely, the said Act and Rules would be considered in deciding the matter. Now it is a case where the subject matter deals with the payment of gratuity and the issue falls under the Payment of Gratuity Act, 1972, which is a Central Act.

28. It is seen from the counter affidavit that the '*Society*' contended that it is following the Tripura State Civil Services (Revised Pension) Rule by following Clause No.15 of the '*bye-law*' of the Tripura Apex Fishery Co-operative Society and accordingly settled the payment of Gratuity to the petitioner and they have not adopted the Central Act i.e., the Payment of Gratuity

Act, 1972. This argument is not open for the 'Society' since it is a settled principle of law that the Central Act would always prevail over the State Act and any regulations of the local bodies. Thus, this Court has no hesitation to say that the petitioner is entitled to claim the gratuity in terms of the Payment Gratuity Act 1972 and the contention of the 'Society' that it has not adopted the Central Act and, accordingly, the same is not binding upon it and it is functioning by following the State Act and its 'bye-law' is negated.

29. It is seen from the order dated 03.02.2021 in WP(C) No.1216 of 2019 which is the subject matter of this writ appeal that while declaring that the petitioner is entitled under the Central Act, the Court has categorically indicated in the Order that the petitioner be paid his gratuity in terms of Section 4 of the 'Act'. Section 4 of the Payment of Gratuity Act is given as under:-

"4. Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-

(a) on his superannuation, or

(b) on his retirement or resignation, or

(c) on his death or disablement due to accident or disease:

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned: Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime

work shall not be taken into account: Provided further that in the case of 23 [an employee who is employed in a seasonal establishment and who is not so employed throughout the year), the employer shall pay the gratuity at the rate of seven days' wages for each season.

3) The amount of gratuity payable to an employee shall not exceed

(4) For the purpose of computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced.

(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

(6) Notwithstanding anything contained in sub-section (1),

(a) the gratuity of an employee, whose services have been terminated for any act, wilful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused;

(b) the gratuity payable to an employee 27 [may be wholly or partially forfeited]-

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment."

30. A fair reading of the above Section emphasizes that the Gratuity shall be payable to the employee as per the calculation in terms of the 'wages'. The said section does not indicate the term '*salary*'.

31. The definition of the term '*salary*' as given in Law Lexicon, Fifth Edition is as under:-

"Salary. Fixed payment made periodically to a person as compensation for regular work (now usually for non-manual work). [S. 6(f), T.P. Act (4 of 1882)].

SALARY is a periodical allowance made as compensation to a person, for his official or professional services or for his regular work; an agreed compensation for services, payable at regular intervals; the periodical compensation due to men in official and other

situations; an annual or periodical payment for services, a stipulated periodical recompense; a stipend wages; hire; an allowance. A fixed sum paid to a person for his services, yearly, half-yearly, or quarterly; stipend; wages; annual or periodical wages or pay; hire; fixed regular wages, as by the year, quarter, or month."

32. The definition of '*salary*' as given in the Oxford Dictionary is as under:-

"Salary:- money that employees receive for doing their job, especially professional employees or people working in an office, usually paid every month"

33. Though the terminology '*salary*' and '*wages*' appear to be the same as they are consideration to be paid by the '*employer*' to its '*employee*' for the services rendered, the salary is again divided into several terminologies like basic pay/basic salary, gross pay/gross salary and net pay/net salary. Since the terminology of the '*salary*' is not used under Section 4 of the Act, it is open for neither the petitioner nor the '*Society*' to calculate the amount of gratuity in terms of '*salary*'. As per the definition of '*wages*' given under Section 2 of Payment of the Gratuity Act, 1972 as stated supra, the computation has to be made.

34. In all fairness, the petitioner is expected to submit his statement in terms of '*wages*' and the '*Society*' is also expected to give its computation in terms of the '*wages*' only. But, as it is seen from the record that the petitioner has claimed the gratuity on the pretext that his last payment was Rs.23,272/- and whereas in the counter affidavit filed by the '*Society*', it is stated that the basic

salary of the petitioner is Rs.12,470/-. The mere bank statement which is filed by the petitioner to show that his last salary drawn does not suffice the definition of 'wages' to claim the payment of gratuity. Both the petitioner and the 'Society' has not drawn the attention of this Court to the salary break-up figures and to consider the figures under the light of the definition of 'wages' under the Payment of Gratuity Act. The order passed in the writ petition also has not decided on the facts and figures, but, it is left open to the petitioner and the 'society' to settle the matter on the basis of the 'wages' as stipulated under the Payment of Gratuity Act but the 'society' is in appeal against the said order.

35. This Court finds no infirmities in the order passed in the impugned writ petition. It is kept open to the petitioner as well as the 'Society' to settle the matter in the light of the Order passed as expeditiously as possible.

36. With the above observation and direction, this present writ appeal stands dismissed. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

B. PALIT, J

T. AMARNATH GOUD, J

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