

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA No.161 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Smt. Ratna Roy, D/o Late Surja Kumar Roy, R/O Chandrapur Nath Para, P.O.- Reshambagan, P.S.- East Agartala, Pin- 799008.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S.- NCC, District- West Tripura, Pin- 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S.- NCC, District- West Tripura, Pin-799006.

..... Respondent(s)

WA No.185 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Killal Chandra Laskar, S/O Late Jaladhar Chandra Laskar, R/O Motor Stand, Sanitala, P.O. Agartala, P.S. East Agartala, Pin 799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S.-NCC, District- West Tripura, Pin-799006.

..... Respondent(s)

WA No.186 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala P.S. West Agartala, District- West Tripura, Pin 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. West Agartala, P.S- West Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

1. Smt. Gita Deb (Ganguly), W/O- Late Biswanath Ganguly, R/O- Kunjaban Colony, P.O- Abhoynagar, P.S- East Agartala, Pin-799002.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.187 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Sekhar Bhattacharjee , S/O Late Sahsi Mohan Bhattacharjee, R/O West Bhati Abhoynagar Pashchim Para, Barjala Road, P/O- Abhoynagar, P.S. West Agartala, Pin- 799002.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.188 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Smt.Santi Rani Kalai, W/O Sri Padmaohan Kalai Singh, R/O- Bijoy Kumar School Road, Krishnanagar, P.O Agartala, P.S West Agartala, District-West Tripura, Pin-799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District West Tripura, Pin 799006.

..... Respondent(s)

WA No.189 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Salil Deb, S/O - late Pulin Behari Deb, R/O- Joynagar, H.G. Basak Road, Battala, PO- Agartala, PS- West Agartala, Pin 799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, PO-Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, PO Kunjaban, P.S NCC, District West Tripura, Pin 799006.

..... Respondent(s)

WA No.190 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Bijoy Choudhuri, S/O- Late Ramendra Kumar Choudhuri, R/O Radhamadhav Sarani, Dhaleswar, P.O. Dhaleswar, P.S East Agartala, District- West Tripura, Pin 799007.

2. The State of Tripura represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S NCC, District-West Tripura, Pin-799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.191 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O.- Agartala P.S- West Agartala, District-West Tripura, Pin 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O-Agartala, P.S-West Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

1. Sri Bhaskar Debbarma, S/O late Prabhat Chandra Debbarma, R/O- Old Kalibari Lane, Krishna Nagar, P.O- Agartala, P.S- West Agartala, District- West Tripura, Pin-799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District- West Tripura, Pin- 799006.

..... Respondent(s)

WA No.192 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Pranab Nandi, S/O- late Pankaj Behari Nandi, R/O- Bankim Sarani, Old T.G. Road, Ramnagar, P.O Agartala, P.S- West Agartala, District-West Tripura, Pin-799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.193 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Jalal Ahmed, S/O Late Maijja Miah, R/O- Masjid Road, Santipara, P.O. Agartala, P.S. East Agartala, Pin 799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S. NCC, District- West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.194 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O.- Agartala P.S- West Agartala, District-West Tripura, Pin 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O-Agartala, P.S-West Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

1. Sri Dibakar Choudhury, S/O- late Dhananjoy Choudhury, R/O. Ramnagar Road No. 2, P.O- Ramnagar, P.S- West Agartala, Pin-799002.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District- West Tripura, Pin- 799006.

..... Respondent(s)

WA No.195 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Krishna Gopal Dey, S/O Late Surya Kumar Dey, R/O-Krishnanagar, Natunpalli, P.O Agartala, P.S. West Agartala, District West Tripura, Pin-799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S. NCC, District-West Tripura, Pin-799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.196 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

,1. Sri Dipak Kumar Nandi, S/O- Late Ramesh Chandra Nandi, R/O 278, Amader Club Road, Bardowali, A.D Nagar, P.O and P.S A.D Nagar, District-West Tripura, Pin-799003.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin-799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.197 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O.- Agartala P.S- West Agartala, District-West Tripura, Pin 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O-Agartala, P.S-West Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

1. Sri Milan Chakraborty, S/O- Late Jagadish Chakraborty, R/O- Madhya Badharghat, Milan Chakra, P.O- A.D Nagar, P.S- A.D. Nagar, Pin-799003.
2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District- West Tripura, Pin-799006.
3. The Secretary, Finance Department, Govt. Of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District- West Tripura, Pin- 799006.

..... Respondent(s)

WA No.198 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O.- Agartala, P.S- West Agartala, District- West Tripura, Pin 799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O- Agartala, P.S- West Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

1. Smt. Geeta Paul (Biswas), W/O- Sri Arabinda Biswas, R/O- Natun Palli, Near Chatrasangha Club, Krishnanagar, P.O- Agartala, P.S- West Agartala, District- West Tripura, Pin- 799001.
2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. Of Tripura, New Capital Complex, P.O- Kunjaban, P.S- NCC, District- West Tripura, Pin-799006.
3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S- NCC, District- West Tripura, Pin-799006.

..... Respondent(s)

WA No.199 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.
2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Nitai Majumder, S/O- late Ram Kali Majumder, R/O Vill-West Pratapgarh, Near United Club, P.O and P.S.-A D Nagar, District West Tripura, Pin-799003.
2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S.- NCC, District- West Tripura, Pin 799006.
3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District- West Tripura, Pin 799006.

..... Respondent(s)

WA No.200 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Shimal Chandra Saha, S/O late Jagyeshwar Saha, R/O Town Pratapgarh, Ramthakur Road, Near Udayaman Sangha, P.O Agartala College, P.S. East Agartala, Pin 799004.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin-799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.201 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Nitai Dey, S/o Late Barda Charan Dey, R/O Ward No 14, Lake Road, Near Debendra Medical Hall, Sub-Division- Sadar, District- West Tripura, Pin-799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.202 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Dilip Acharjee, R/O Mantribari Road Extension, Town Bordowali, P.O. Agartala, P.S. West Agartala, Pin-799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.203 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Subhash Chandra Biswas, S/O late Joy Chandra Biswas, R/O Joynagar, Madhya Lane, Near Yuva Samaj Club, P.O. Agartala, P.S. West Agartala, Pin-799001.

2. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.204 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Gopal Chandra Sen, S/O late Basanta Kumar Sen, R/O West Lane of Shrivnagar, Gedumiah Masjid, P.O Agartala College, PS- East Agartala, Pin799004.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P O Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.205 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Smt Suchitra Paul (Saha), W/O Sri Rabindra Chandra Saha R/O Ramnagar Raod No 8, P.O. Agartala, P.S-West Agartala, District- West Tripura, Pin-799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.206 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Raghunath Sarkar, S/O Late Kanan Ded Sarkar, R/O Melarmath, P.O. Agartala, P.S. West Agartala, District-West Tripura, Pin 79900.

2. The State of Tripura, represented by Principal Secretary Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC District-West Tripura, Pin-799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.207 of 2022

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Badal Kumar Choudhuri, S/O Late Bidhu Bhusan Choudhuri, C/O Ashok Kumar Choudhuri R/O Vill and P.O. Shyam Sundar Para, East Pratapgarh, District-West Tripura, Pin 799004.

2. The State of Tripura represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S. NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

WA No.29 of 2023

1. Agartala Municipal Corporation, represented by its Municipal Commissioner, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

2. The Municipal Commissioner, Agartala Municipal Corporation, City Center Complex, Paradise Chowmuhani, P.O. Agartala, P.S. West Agartala, District- West Tripura, Pin- 799001.

..... Appellant(s)

V E R S U S

1. Sri Samir Kumar Ghosh, S/O Lt. Sachindra Ch. Ghosh Resident of Durga Chowmuhani, Pragati Road, Opposite of Basanti Clinic, P.O. Agartala, P.S. West Agartala, District-West Tripura, Pin 799001.

2. The State of Tripura, represented by Principal Secretary, Urban Development Department, Govt. of Tripura, New Capital Complex, P.O Kunjaban, P.S. New Capital Complex, District-West Tripura, Pin 799006.

3. The Secretary, Finance Department, Govt. of Tripura, New Capital Complex, P.O. Kunjaban, P.S NCC, District-West Tripura, Pin 799006.

..... Respondent(s)

For Appellants(s) : Mr. A. Bhoumik, Advocate,
Mr. S. Dey, Advocate,
Mr. Ankur Saha, Advocate.

For Respondent(s) : Mr. S.S. Dey, Advocate General,
Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate,
Mrs. Ayantika Chakraborty, Advocate.

WP(C) No.599 of 2023

1. Smt. Rubi Dutta Deb, W/o- Chandra Sekhar Deb, R/o- Ward No. 18, Jail Ashram Road, West side of Bharat Tirtha Club, P.O. - Dhaleswar, Agartala, Tripura, Pin - 799007.

2. Sri Ashim Baran Datta, S/o- Lt. Monoranjan Datta, R/o- Bardowali, P.O.- AD Nagar, Agartala, West Tripura.

3. Sri Chandra Sekhar Deb, S/o- Lt. Monmohan Deb, R/o- Jail Ashram Road, West side of Bharat Tirtha Club, Agartala, Tripura, Pin – 799007.

4. Sri Nishi Kanta Sinha, S/o- Lt. Krishnadhan Sinha, R/o- South Dhaleswar, Opposite of Sabyasachi Club, P.O.- Agartala College, South Dhaleswar, Jogendranagar, West Tripura, PIN- 799004.

5. Sri Jiban Kumar Saha, S/o- Lt. Sukhlal Saha, R/o- Town Pratapgarh, Road No.- 1, West Tripura, Pin- 799001.

..... Petitioner(s)

V E R S U S

1. The State of Tripura to be represented by the Secretary, Department of Finance, Govt. of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, Pin - 799010.

2. The Secretary, Department of Urban Development Department, Govt. of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, Pin-799010.
3. The Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura.
4. Agartala Municipal Corporation, to be represented by the Municipal Commissioner, Agartala Municipal Corporation, Agartala, West Tripura.
5. The Chief Executive Officer, Agartala Municipal Corporation, Agartala, West Tripura.

..... Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate,

For Respondent(s) : Mr. A. Bhoumik, Advocate,
Mr. S. Dey, Advocate,
Mr. Ankur Saha, Advocate.

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

Date of hearing and judgment : **19th February, 2024.**

Whether fit for reporting : YES

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Bhoumik, learned counsel together with Mr. S. Dey and Mr. Ankur Saha, learned counsel appearing for the appellants. Also heard Mr. S.S. Dey, learned Advocate General and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the respondents.

[2] Whether the employees of Agartala Municipal Corporation (AMC, *for short*) are covered by the Payment of Gratuity Act, 1972 (*the Act of 1972, for short*) or not is the question raised in these appeals. It appears to be second round of litigation on this issue as it appears from the subsequent narrative. One Sri Samir Kumar Ghosh, a retired employee of AMC, had approached the Writ Court in WP(C) No.1091 of 2017 seeking a direction upon the respondents to pay his gratuity on the basis of his last pay drawn inclusive of basic salary and Dearness Allowance (DA) and by applying revised ceiling of Rs.10,00,000/-

for payment of gratuity. He prayed that the deficient amount of gratuity be paid with interest from the date of retirement till actual payment (he retired on superannuation *with effect from* 31st December, 2015 as a Head Clerk). The learned Writ Court upon consideration of the rival case of the parties, relevant provisions of 'the Act of 1972', a judgment rendered in case of ***Bhupati Debnath versus State of Tripura and Others***, reported in (2020) SCC Online Tri 84 and also the decision of the Apex Court in case of ***Nagar Ayukt Nagar Nigam, Kanpur versus Mujib Ullah Khan and another***, reported in (2019) 6 SCC 103 directed the AMC to calculate the gratuity in terms of Section 4(2) of the Act payable to the petitioner by taking into account his basic salary and DA. The gratuity so calculated would be paid by applying the revised ceiling of Rs.10,00,000/-. After deducting the gratuity already paid, remaining amount would be paid within a period of 4(four) months from the date of judgment along with simple interest @ 6% per annum upon completion of 1(one) month from the date of superannuation till actual payment. It would be pertinent to mention here that it was pointed out before the learned Writ Court that AMC had adopted CCS (Pension) Rules *with effect from* 1st January, 1992 by virtue of the notification dated 21st December, 1991. The learned Writ Court also took into consideration the Central Government notification dated 8th January, 1982 providing that specified local bodies in which 10 or more persons are employed or were employed in any day preceding 12 months would be covered by the Act. In view of the overriding effect of Section 14 of 'the Act of 1972', and the decision in ***Nagar Ayukt Nagar Nigam, Kanpur*** (*supra*) employees of the municipalities would be governed by the said Act, notwithstanding any statutory provision contained to the contrary in the State Act. Paragraph-8 to 14 of the decision in ***Nagar Ayukt Nagar Nigam, Kanpur*** (*supra*) was also

noticed. The learned Court was also apprised that the ceiling limit of Rs.10,00,000/-, earlier enforced since 24.05.2010 was enhanced to Rs.20,00,000/- by virtue of the Central Government notification dated 29.03.2018 which was also taken note of in case of ***Bhupati Debnath (Supra)***. The Corporation being dissatisfied approached the Appellate Court in case of ***Agartala Municipal Corporation versus Sri Samir Kumar Ghosh and others*** in ***Writ Appeal No.185 of 2020***. The Appellate Court also considered the aforesaid provisions of 'the Act of 1972', the notification dated 08.01.1982 and the decision in case of ***Nagar Ayukt Nagar Nigam, Kanpur (supra)*** and refused to interfere in the decision of the learned Single Judge. It was also held that the writ petitioner was not an employee of the Central Government or State Government but of a local body covered within the definition of employee under Section 2(e) of the Act. We have been informed that the decision of ***Sri Samir Kumar Ghosh (supra)*** has been complied by the Corporation. Sri Samir Kumar Ghosh, however, once again approached the learned Writ Court in WP(C) No.204/2021 with a grievance that though the gratuity to the ceiling limit of Rs.10,00,000/- has been paid in terms of the judgment rendered earlier but the computation of the amount of Rs.7,18,608/- paid to him did not count his entire length of service in quantifying his gratuity. The learned Writ Court at this instance directed the AMC to recalculate the gratuity amount after considering the total length of his service i.e. 40 years under the Corporation and to pay the remaining gratuity amount, if any, according to his entitlement, within a period of 3(three) months from the date of order. The Corporation has assailed this order in WA No.29 of 2023.

[3] Another batch of writ petitions led by ***WP(C) No.126 of 2021*** in case of ***Bhaskar Debbarma versus Agartala Municipal Corporation and***

others were decided by the learned Writ Court vide judgment dated 27.06.2022. These writ petitioners had approached this Court for a direction upon the respondents to make the full and final payment of gratuity with interest @ 9% per annum *with effect from* the date on which gratuity became payable till the date of payment after adjusting lump sum amount of Rs.4,00,000/- already paid. Other ancillary prayers were also made for payment of interest. The petitioner, Bhaskar Debbarma was treated as the lead case by the learned Writ Court to decide the batch of writ petitions. Bhaskar Debbarma pleaded that he is entitled to get Rs.9,83,578/- as full and final payment of gratuity along with interest as per enhanced ceiling limit of gratuity of Rs.10,00,000/- as per the amendment to the Payment of Gratuity Act. He also contended that he was paid Rs.4,00,000/- earlier as full and final payment of gratuity though his claim was higher. The respondents took a plea that the State had promulgated relevant rules limiting the payment of gratuity under the Pension Rules and had passed the Payment of Gratuity (Tripura Amendment) Bill, 2021 regulating the provisions relating to the payment of gratuity. The said bill, however, necessitated the assent of the President of India as it was a State amendment. They denied the claim of the petitioner of enhanced gratuity of Rs.10,00,000/- under 'the Act of 1972'. On this occasion, the learned Writ Court again considered the decisions rendered earlier in case of *Bhupati Debnath versus State of Tripura & others* in WP(C) No.1054 of 2019 decided on 13.02.2020; *Mamat Singha Roy versus State of Tripura & another* in WP(C) NO.1057 of 2019 decided on 13.02.2020; *Samir Kumar Ghosh versus State of Tripura & others* in WP(C) No.1091 of 2017 decided on 29.05.2020; *Nagar Ayukt Nagar Nigam, Kanpur versus Mujib Ullah Khan and another*, reported in (2019) 6 SCC 103 and also the decision of the appellate Court in case of *Agartala*

Municipal Corporation versus Sri Samir Kumar Ghosh & others in ***WA No.185 of 2020*** decided on ***29.01.2021*** and directed the respondents to calculate the gratuity of the petitioners considering the revised ceiling limit of Rs.10,00,000/- which came into force *with effect from* 24.05.2010 and pay the remaining gratuity with a simple interest @ 6% per annum for the period after expiry of statutory period of one month from their respective dates of retirement. The learned Court has also made it clear that the gratuity has to be paid considering the last basic pay which includes DA as defined under Section 2(s) of the Payment of Gratuity Act, 1972. The respondents were given liberty to examine and determine the claims of each of the 9(nine) petitioners.

[4] Another batch of writ petitions led by the case of ***Smt. Ratna Roy versus the State of Tripura and others*** in ***WP(C) No.218 of 2021*** came to be decided by the learned Writ Court vide judgment dated 27.06.2022. The lead case of ***Smt. Ratna Roy (supra)*** was evidenced by the learned Writ Court while deciding the issue raised herein that petitioner had also sought full and final payment of gratuity with interest @ 9% per annum *with effect from* the date on which gratuity became payable till its payment after adjusting lump sum amount of Rs.3,51,750/- and coupled with interest @ 9% per annum. The learned Writ Court issued similar direction in case of ***Smt. Ratna Roy (supra)*** by directing the respondents to count 50% of the service rendered by the petitioners till their regularization in service along with the regular service period rendered by them for determining the qualifying service years for calculation of death-cum-retirement gratuity. It also directed the respondents to calculate the gratuity of the petitioners considering the revised ceiling limit of Rs.10,00,000/- against those petitioners, who retired on or after the date on which the revised ceiling limit of Rs.10,00,000/- came into force *with effect*

from 24.05.2010 and Rs.20,00,000/- against those petitioners who retired from service on or after 29.03.2018 when the revised ceiling of Rs.20,00,000/- came into force. The remaining amount of gratuity was directed to be paid with simple interest @ 6% per annum for the delayed period after expiry of statutory period of one month from their respective dates of retirement. Respondents were granted liberty to examine and determine the claim of each of the 15(fifteen) petitioners in such manner.

[5] Therefore, the instant batch of cases led by *Writ Appeal No.161/2022* in case of *Agartala Municipal Corporation & another versus Smt. Ratna Roy & others* and connected cases arise out of two judgments rendered in the batch of cases by the learned Writ Court i.e. (1) *Sri Bhaskar Debbarma versus Agartala Municipal Corporation & others* in *WP(C) No.126 of 2021*; (2) *Smt. Ratna Roy versus the State of Tripura & others* in *WP(C) No.218 of 2021* along with other analogous cases and in case of *Sri Samir Kumar Ghosh versus the State of Tripura & others* in *WP(C) No.204 of 2021* dated 09/01/2023.

[6] Mr. A. Bhowmik, learned counsel for the appellant-Corporation has referred to the brief facts of the case of each of the petitioners which shall be later referred to in the form of a tabular chart and *inter alia* made the following submissions:

[6.1] The learned Single Judge failed to appreciate that CCS (Pension) Rules 1972 was made applicable to Agartala Municipal Corporation vide notification bearing No.F.14(6)-LSG/83 dated 21.12.1991 issued by the then Local Self-Government Department, Govt. of Tripura. A perusal of the said notification would show that the then Local Self Government Department, Govt. of Tripura applied the CCS (Pension) Rules, 1972 (as adopted in the State of Tripura) for the Officers and employees of Agartala Municipal Corporation. The respondent No.1 did not even challenge the adoption Notification dated 21.12.1991 and the learned Single Judge has most erroneously held that the Payment of Gratuity Act, 1972 will have application to the employees of Agartala Municipal Corporation.

[6.2] The learned Single Judge failed to appreciate that under Section 5 of the Payment of Gratuity Act, 1972 the State Govt. has the power to exempt an organization from the purview of Payment of Gratuity Act, 1972. Even in the Counter Affidavit filed by the State, the State took a stand that the Payment of Gratuity Act, 1972 will not apply to the Agartala Municipal Corporation as CCS (Pension) Rules, 1972 has been adopted for Agartala Municipal Corporation. State has taken the stand that adoption of CCS (Pension) Rules, for the employees of the Agartala Municipal Corporation is a conscious decision in view of under Section 5 of the said Act. The adopted CCS (Pension) Rules, 1972 was further modified by the Urban Development Department, Govt. of Tripura by enacting Rule under Section 274 of Tripura Municipal Act, 1994 which was called as the Tripura State Govt. Pensioners and Family Pensioners (Revision of Pension) Rules, 1999 as notified vide Notification dated 14.08.2003. The appellants highlight that Rule 50 of CCS (Pension) Rules, 1972 deals with Payment of Gratuity and the ceiling limit of payment is revised time to time as per Tripura State Civil Services (Revised Pension) Rules. The notification dated 14.08.2003 was not challenged in WP(C) No.1091/2017 in the case of *Sri Samir Kumar Ghosh Vs. the State of Tripura and others* and the Hon'ble Court also did not consider this aspect of exemption of AMC from the purview of Payment of Gratuity Act, 1972 by a process for adoption and subsequent framing of Rules.

[6.3] Learned Single Judge of this Hon'ble High Court is also not correct in holding that the CCS (Pension) Rules, 1972 and TSCS (Revised Pension) Rules, 2009 has no application to AMC in view of Section 14 of the Payment of Gratuity Act, 1972 without considering that once the State has exercised the power of exemption under Section 5 of the Payment of Gratuity Act, 1972, Payment of Gratuity Act, 1972 including Section 14 of the Act would not apply to AMC.

[6.4] That, Hon'ble Apex Court in the judgment reported in (1998) 7 SCC 221 titled *Municipal Corporation of Delhi versus Dharam Prakash Sharma and another* held that mere fact that Gratuity is provided for under the Pension Rules will not disentitle the petitioner to get the payment of gratuity under the Payment of Gratuity Act, 1972 in view of the overriding provisions contained in Section 14 of the Act. Section 5 of the Payment of Gratuity Act, 1972 has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act if in the opinion of the Government the employees are in receipt of gratuity or pensionary benefit not less favourable. Again, the Hon'ble Apex Court in a judgment reported in (2010) 2 SCC 44 in paragraph-19 held that Payment of Gratuity to an employee cannot be taken away except in accordance of the provisions of the act where-under an exemption from such payment may be granted only by the appropriate Government under Section 5 of the Act. Therefore, the proposition that the appropriate Government may exempt an establishment from the purview of Payment of Gratuity Act, 1972 is thus well established.

[6.5] The learned Single Judge while allowing the writ petition filed by the respondent No.1 relied on the earlier judgment of the learned Single Judge of this Hon'ble High Court rendered in the case of *Sri Samir Kumar Ghosh versus the State of Tripura & others* in WP(C) No.1091/2017 as upheld by the learned Division Bench of this Hon'ble High Court in W.A. No.185/2020. A perusal of the said judgments passed by the learned Single Judge of this Hon'ble High Court and the learned Division Bench of this Hon'ble Court would show that at the time when those judgments were delivered the aforesaid grounds that already CCS (Pension) Rules, 1972 has been adopted for Agartala Municipal Corporation and by a process of adoption Agartala Municipal Corporation has been exempted from the purview of Payment of Gratuity Act, 1972 and existence of other Rules regulating the Payment of Gratuity of employees of Agartala Municipal Corporation was not considered by the Hon'ble High Court. Therefore, the decision of this Hon'ble High Court in case of *Sri Samir Kumar Ghosh (supra)* as upheld by the learned Division Bench in W.A. No.185/2020 is a judgment per incuriam as the said judgment does not consider the vital aspect of exemption of Agartala Municipal Corporation and exercise of power under Section 5 of the Payment of Gratuity Act, 1972.

[6.6] He has placed reliance on the case of *A.R. Antulya versus R.S. Nayak* reported in (1988) 2 SCC 602 and *Sandeep Kumar Bafna versus the State of Maharashtra* reported in (2014) 16 SCC 623. In the instant case the learned Single Bench as well as the learned Division Bench of this Hon'ble High Court while rendering the judgment in *Samir Kumar Ghosh's* (*supra*) case failed to consider important statutory provisions including adoption of CCS (Pension) Rules, 1972 for Agartala Municipal Corporation, existence of Rules framed under Section 274 of the Tripura Municipal Act, 1993 modifying the adopted CCS (Pension) Rules, 1972 for the employees of Agartala Municipal Corporation.

[6.7] In the present cases, the writ petitioners, barring few, filed their respective writ petition after inordinate delay from the date of their retirement. There is no explanation in the writ petition regarding such delay caused in filing of the writ petition. Therefore, those writ petitions must be held to be barred by doctrine of delay and laches.

[6.8] All the writ petitioners, barring few, filed their respective writ petitions after 3(three) years from the date of retirement. In some cases there is a delay of 8/9 years in approaching the Hon'ble Court. Further, for the delay caused in filing of the writ petition, explanation should be given to the satisfaction of the Hon'ble Court.

[6.9] That, Payment of Gratuity is a one-time financial benefit given to the employees on superannuation or death or resignation as the case may be and there is no continuous cause of action in case of Payment of Gratuity. No recurring loss is suffered by the employees and therefore the writ petitioners ought to have approached the Hon'ble Court immediately after their retirement.

[6.10] That, the petitioners are also estopped from claiming gratuity under the Payment of Gratuity Act, 1972 having accepted the gratuity extended to the writ petitioners under the CCS (Pension) Rules, 1972. The appellants submit that before the date of retirement of the writ petitioners, gratuity was sanctioned in favour of the writ petitioners under the CCS (Pension) Rules, 1972 and 75% of the gratuity was also paid to the writ petitioners. The remaining amount of gratuity was also paid to the writ petitioners after settlement of other retiral benefits. The writ petitioners thus accepted gratuity under the CCS (Pension) Rules, 1972 and were in deep slumber for considerable years. The Hon'ble Apex Court in a judgment reported in (1974) 1 SCR 304 titled *Parameshwari Prasad Gupta versus Union of India* held that the rules of the company expressly purport to bind all the employees of the company. In *Punjab and Sind Bank and another versus S. Ranveer Singh Bawa and another*, (2004) 4 SCC 484 the Hon'ble Apex Court applied the law of estoppel on an employee of the bank who opted for VRS and thereafter utilized the payments made to the employee by holding that the employee cannot resile from the VRS opted by the employee.

[6.11] That, under Rule 7 of the Payment of Gratuity Act, 1972 an employee is who is eligible for Payment of Gratuity under the Act is to apply within 30 days from the date from which the gratuity became payable in 'I' to the employer. The first proviso to Rule 7(1) provides that in case of superannuation or retirement the employee may apply to the employer before 30 days of the date of superannuation or retirement. In the present cases none of the writ petitioners made any application to the employer for payment of gratuity before 30 days of the date of superannuation or retirement. Also, there is a provision for appeal under Rule 18 of the Rules to the appellate authority against the decision taken by the controlling authority under Rule 17 of the Rules. The writ petitioners herein did not exhaust the said alternative remedy provided by the Payment of Gratuity Rules, 1972 and has approached the Writ Court.

[7] Learned counsel for the appellant-Corporation, has therefore contended that the State of Tripura has adopted CCS (Pension) Rules, 1972 to AMC vide notification dated 21.12.1991 which is in the nature of an exemption

under Section 5 of the Act of 1972. The Urban Development Department, Government of Tripura has framed the Tripura State Government Pensioners and Family Pensioners (Revision of Pension) Rules, 1999 which have been adopted for the employees of the AMC. By the said notification the provisions of CCS (Pension) Rules, 1972 stood modified to the extent provided thereunder. AMC has, thereafter, been paying gratuity to its employees under the said Rules as per the rate of gratuity, the ceiling limit and the qualifying service. Learned counsel for the appellant-Corporation has also contended that the petitioners did not challenge the notification dated 21.12.1991 whereby the State Government adopted CCS(Pension) Rules 1972 for AMC neither did they challenge the notification dated 14.08.2003 by which specific Rules for AMC for payment of gratuity to its employees of the AMC were framed. These aspects were not considered by the learned Writ Court in WP(C) No. 1091/2017 in case of *Sri Samir Kumar Ghosh* (*supra*). The learned Division Bench also did not consider these issues in Writ Appeal No.185/2020 in case of *Agartala Municipal Corporation* (*supra*). In substance, it is the stand of the AMC that by adoption of CCS(Pension) Rules, 1972 a conscious decision was taken to exempt the Corporation from applicability of the Act of 1972 in exercise of the powers under Section 5 by the appropriate government i.e. the State Government in the instant case. The decision in case of *N. Mani Vs. Sangeetha Theatre and others* rendered in (2004) 12 SCC 278 (paragraph- 8 and 9) is also relied upon by the appellant-Corporation to buttress the submission.

[8] Mr. S.S. Dey, learned Advocate General has at the outset taken a novel plea which was neither raised before the Writ Court or in appeal by the appellant-Corporation that by enactment of Payment of Gratuity Act, 1972

which according to him is under entry 24, list-III of the Schedule-7 of the Constitution of India, the field of legislation to enact an appropriate law governing the payment of gratuity to employees under its corporation and local bodies for the State legislature have been completely ousted. In support of his submission, he has referred to two decisions (1) *M. P. Vidyut Karmachari Sangh versus M.P. Electricity Board*, reported in (2004) 9 SCC 755 (paragraph-19); (2) *Government of NCT of Delhi versus Union of India*, reported in (2023) 9 SCC 1 (paragraph-92). He has also canvassed that the notification dated 21.12.1991 which applies the CCS (Pension) Rules, 1972 to the employees of the AMC is a conscious decision of the State Government to exempt the Corporation from the applicability of 'the Act of 1972'. It is also submitted that the Central Legislature has in a blanket manner notified all local bodies falling within the jurisdiction of the different States like the AMC without devolution of any financial support to this Corporation to bear the statutory liability of payment of gratuity which is enhanced from time to time by the notification of the Central Government. However, learned Advocate General has not questioned the statutory exercise of power by the Central Government to notify local bodies like municipalities as covered under the provisions of Payment of Gratuity Act, 1972 vide notification dated 8th January, 1982. He has also added that the Corporation may not have enough financial resources to bear the burden of the enhanced ceiling of gratuity with interest thereupon in terms of Section 7 of 'the Act of 1972' in individual cases which may range much above the actual gratuity payable to such employees.

In substance, the submissions of the appellants and the State are that employees of AMC are not covered by the provisions of 'the Act of 1972' as there is a conscious exercise of power by the State Government to exempt

the AMC from the applicability of 'the Act of 1972' by virtue of the notification dated 21.12.1991 whereunder the CCS (Pension) Rules, 1972 were applied to the employees of the AMC.

[9] On part of the writ petitioners, Mr. P. Roy Barman, learned senior counsel has *inter alia* made the following submissions:

[9.1] The Payment of Gratuity Act, 1972, has been enacted by the Parliament and it extends to whole of the India. Section 1(3) of the Act lays down as to whom the Act will be applicable. Section 1(3)(c) of the Act is quoted herein below;

"It shall apply to 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."

[9.2] That, in terms of Section 1(3)(c) of the Act, 1972, Central Govt. has published Notification on 08.01.1982 and the said notification is as follows:

"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 of the 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."

[9.3] The said Notification issued by the Central Govt. was published in Official Gazette on 08.01.1982. In view of this, Employees of the all Local Bodies in which 10 or more persons are employed / were employed fell within the purview of such other establishment or class of establishment as mentioned in Section 1.(3)(c) of the Act to which the Act is applicable.

[9.4] The Hon'ble Supreme Court in Case of Nagar Ayukt Nagar Nigam, Kanpur Vs. Mujib Ullah Khan and another reported in (2019) 6 SCC 103, has taken note of the Gazette Notification dated 08.01.1982, issued by the Central Govt. and has held that local bodies, wherein 10 or more employees are employed, or were employed are covered by the Act, 1972. The said act is applicable to such local bodies and employees of those local bodies will be governed by the Act, 1972, so far the payment of gratuity is concerned. Para 11 of the said report of Hon'ble Supreme Court has been relied upon:

[9.6] The Hon'ble Supreme Court in the aforesaid Judgment relying on the section (1)(3)(c) of the Act, 1972 and Gazette Notification, dated, 08.01.1982 and section 14 of the Act, 1972, has unambiguously held, that, the Employees of the Municipalities will be governed by the Payment of Gratuity Act, 1972 and State Act or any other Act would not be applicable to the employees of the Municipalities.

[9.7] In Nagar Ayukt Nagar Nigam, Kanpur (supra) the Hon'ble Supreme Court repelled the entire argument of the Appellant that the State Act confers restrictive benefit of gratuity than what is conferred under the Central Act. Such argument was held as not tenable in view of Section 14 of the Act and that

liberal payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act. Such is the view taken by the Controlling Authority.

[9.9] That, in Samir Kumar Ghosh (supra) a plea was taken by the AMC that the Petitioner is not governed by the Act, 1972, since the AMC has adopted CCS (Pension) Rules, 1972 & limit of gratuity shall be Rs. 4 lakhs as applicable under the CCS (Pension) Rules at the relevant time. AMC also took the plea that as per Finance Department Notification dated 05.05.2009, there was a ceiling of Rs. 4 lakhs for payment of Gratuity. Such ceiling was revised to Rs. 10 lakhs by Notification, dated, 11.07.2017. As Samir Ghosh, the Petitioner therein, retired before the said date, pre-revised ceiling of Gratuity Rs 4 lakhs has been applied in his case.

[9.10] The learned Single Judge relying on the judgment of the Hon'ble Supreme Court in Nagar Nigam, Gorakhpur (supra) held that payment of gratuity is to be made to Samir Kumar Ghosh, the Petitioner, a retired employee of AMC, in terms of the Payment of Gratuity Act, 1972, notwithstanding adoption of the CCS (Pension) Rules, 1972 by the AMC. The learned Single Judge also referred to the Judgment of the Hon'ble High Court of Tripura passed in Bhupati Debnath [WP(C) 1054/2019], wherein after making elaborate discussion of the different provisions of the Payment of Gratuity Act, 1972, the Hon'ble High Court held that in terms of Section 4 of the Act, so far payment of gratuity, its computation and ceiling limit (up to which such amount can be made), as referred to in Section 4 of the said Act, the term "appropriate Act" has no bearing.

[9.12] The Judgment, dated, 29.05.2020, passed in WP(C) 1091/2017 (Samir Kumar Ghosh Vs. Agartala Municipal Corporation & Others), has been affirmed by the Division Bench of the Hon'ble High Court vide Order dated 29.01.2021 passed in W.A No 185/2020 [Agartala Municipal Corporation Vs Samir Kumar Ghosh and 2 others]. The Division Bench of the Hon'ble High Court in W.A. 185/2020, has also relied on the decision of the Hon'ble Supreme Court passed in Nagar Ayukt Nagar Nigam, Kanpur vs. Mujib Ullah Khan and Another [(2019) 6 SCC 103].

[9.14] The issue has already been settled by the Order dated, 29.01.2021, passed by the Division Bench of the Hon'ble High Court in W.A. 185 of 2020. Agartala Municipal Corporation has already acted in compliance with the direction given by the learned Single Judge vide Judgment, dated 29.05.2020 in WP(C) 1091/2017, affirmed by the learned Division Bench.

[9.15] It has been well settled by numerous decision of the Hon'ble Apex Court [(2004) 11 SCC 26{Para 339 & 340}] that the Co-ordinate Bench of the same High Court cannot disagree or overrule the Judgment, dated 29.01.2021, passed by a Same Co-ordinate Bench in WA 185/2020.

[9.17] That, so far Agartala Municipal Corporation is concerned, there is no exemption obtained under Section 5 of the Act, 1972. Adoption of the CCS (Pension) Rules, 1972, by the Agartala Municipal Corporation under no stretch of imagination, can be held as obtaining of exemption under Section 5 of the Act, 1972. Moreover, exemption under Section 5 of the Act is available only when the employees of the concerned establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. As evident from the Counter Affidavit of Agartala Municipal Corporation, the benefits available to the employees of the municipality under the CCS (Pension) Rules, 1972 is less favourable than the benefits conferred under the Payment of Gratuity Act, 1972. For this simple and obvious reason, Section 5 cannot be invoked. Even assuming by giving imagination a wild run, that, Notification adopting CCS (Pension) Rules, falls under Section 5; then also Section 5 cannot be invoked, as admittedly, the

benefits given under the CCS (Pension) Rules, 1972, are not more favourable than the benefit conferred under the Act, 1972.

[9.18] The averment that, the Judgment of the L'd Division Bench in WA 185/2020 and the learned Single Judge in WP(C) 1091/2017 are per incuriam is utterly vexatious and offensive. Both the learned Single Judge and the Hon'ble Division Bench have taken note of CCS (Pension) Rules and its adoption by Agartala Municipal Corporation and the Tripura State Govt. Pensioners and Family Pensioners (Revision of Pension) Rules, 1990. After taking note of such Rules, the Hon'ble Division Bench & the learned Single Judge decided both the Writ Petition and Writ Appeals.

[9.19] There is no requirement of challenging the CCS (Pension) Rules, 1972 or TSCS (RP) Rules, 1999 or TSCS (RP) Rules, 2009, as those rules are not applicable to the Employees of Agartala Municipal Corporation. However, in some of the Writ Petitions, the aforesaid Rules have been challenged [WA 161/2022, WA 185/2022, WA 186/2022, WA 187/2022, WA 190/2022, WA 192/2022, WA 195/2022, WA 197/2022, WA 198/2022, WA 199/2022, WA 201/2022, WA 203/2022, WA 206/2022, WA 207/2022]. It is also settled law so far as delegated legislation is concerned, notwithstanding no challenge to the rule, High Court can quash the rule and held it is inapplicable.

[9.20] That, in Counter Affidavit filed by the Appellants (AMC), it is not contended, that, Judgments of the learned Single Judge in WP(C)1091/2017 & the Hon'ble Division Bench in WA 185/2020 are Judgments per incuriam. For the first time, this contention has been made.

[9.21] Gratuity is a statutory right. Against statutory right, there cannot be any estoppel. Gratuity cannot be bartered away or contracted out. There is also no estoppel against statutory right. The Writ petitioners were not in a bargaining position. Statutory right cannot be defeated by taking the plea of delay or laches. For the so called delay, no third party right has matured.

[9.22] In Allahabad Bank and Ors. Vs. All India Allahabad Bank Retired Emps. Assn. and Ors. [(2010) 2 SCC 44] the Hon'ble Supreme Court of India, vide Para 23 has held, that, Right to Gratuity is a statutory right. In Paras 30 & 31 of the Judgment the Hon'ble Supreme Court observed that no establishment can decide for itself that employees in such establishments were in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Sub-section (5) of Section 4 protects the rights of an employee to receive better terms of gratuity from its employer under any Award or agreement or contract as the case may be.

[9.25] The Hon'ble Supreme Court in Municipal Corporation of Delhi versus Dharam Prakash Sharma and Ors. [(1998) 7 SCC 221], has held that the Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The Hon'ble Supreme Court in the aforesaid Judgment also held that beneficial legislation is to be given liberal construction having regard to the directive principle of state policy. Payment of Gratuity Act, 1972 is a welfare legislation deserving liberal interpretation.

[10] Learned senior counsel for the writ petitioners has contested the instant appeals as being a forced upon litigation upon the employees of the AMC once again when none of the issues raised herein were *res integra* or not considered by the learned Court earlier in case of ***Sri Samir Kumar Ghosh*** (*supra*). Learned senior counsel for the writ petitioner has specifically drawn the attention of this Court to the decision in case ***Sri Samir Kumar Ghosh*** (*supra*) dated 29.05.2020 where there is a reference of the 1991 notification which has been also dealt with at paragraph Nos.6 and 7 of the said judgment. It is further submitted that the learned Writ Court being conscious of the payments already made under the Pension Rules, directed the respondent-Corporation to deduct the amount already paid from the enhanced ceiling of Rs.10,00,000/- payable to the petitioner. It should carry interest if not paid within 30 days from the date of retirement of the employee. Learned senior counsel for the writ petitioners has countenanced the contention of the appellant-Corporation that the acceptance of gratuity under the Pension Rules amounted to estoppel against the employees. He has submitted that the Corporation owes a statutory obligation to make payment under the central legislation and any payment accepted under the Pension Rules by any of these retired employees could not operate as an estoppel since estoppel does not operate against a statute. He has referred to the decision of ***Allahabad Bank and another versus All India Allahabad Bank Retired Employees Association***, reported in (2010) 2 SCC 44 (paragraphs- 2, 14 and 21 in particular) in support of the aforesaid submission. Writ petitioners have also contested the plea that none of these employees had opted for being governed by the Pension Rules, 1972 as has been projected by the appellants. He submitted that the pleadings lack specific averments to that effect.

[11] Learned senior counsel for the writ petitioners has also countenanced the point of delay in approaching the Court for release of gratuity under 'the Act of 1972'. In support of this submission, they have also relied upon a decision of Single Bench of Bombay High Court presided over by Hon'ble Dr. D. Y. Chandrachud, J (as His Lordship then was) in Writ Petition No.564 of 2005 in case of *H. Jayarama Shetty Vs. the Sangli Bank Ltd.* Paragraph-11 of the judgment has been specifically referred to which postulates that filing of an application before the employer under Section 7 of the Act of 1972 is not a condition precedent. It is a procedural provisions on filing of which the limitation under the Rules is triggered from the date of filing of the application but it obviously cannot defeat the claim of the employees. Learned senior counsel for the writ petitioners has summarized the submissions to the effect that the entire premise of the appellants case based upon notification dated 21.12.1991 is untenable in law as there has been no conscious application of mind required by the appropriate government to exempt the AMC from the applicability of 'the Act of 1972' that the existing scheme or Pension Rules have better terms of gratuity or were no less favorable than what was provided under 'the Act of 1972'. Based on these submissions, learned senior counsel for the writ petitioner has prayed for rejection of the instant appeals.

[12] We have heard learned counsel for the parties at length and taken note of the rival submissions of the parties. We have also gone through the decisions cited above, some of which have been referred to in the forgoing paragraphs of this judgment. Before we proceed to deal with the challenge to answer the issue raised herein, the bare details of the respective writ petitioners as are borne out from the pleadings have been tabulated in the form of chart and are being furnished hereunder:

W.A./ W.P. (C) No.	Against Judgment & Order	Details of Writ Petitioners
W.A. 161 of 2022 Along with W.P.(C) No. 218 of 2021 AMC v. Ratna Roy	W.P. (C) No. 218 of 2021	• Date of Joining- 03.05.1988 (as DRW). • Regularized- 01.11.2000 • Date of Retirement- 31.12.2018 • Total Period of Service- 24 years. • Basic Pay- Rs. 28,570 • D.A.- • Entitled amount of gratuity- Rs.3,95,584/- (as provided by the Single Judge Bench) • Paid – Rs.3,51,750/-
W.A.185 of 2022 Along with W.P.(C) No. 175 of 2021 AMC v. Killal Chandra Laskar	W.P. (C) No. 126 of 2021	• Date of Joining- 20.10.1981 • Regularized- • Date of Retirement- 31.10.2011 • Total Period of Service- 30 Years • Basic Pay- Rs. 17,350/- • D.A.- Rs. 4,685/- • Amount sanctioned till date - Rs. 2,60,250/- • Entitled amount of gratuity- Rs.3,81,375/- (as provided by the Single Judge Bench) Note: Name of the respondent in the WP(C) 126 is reflected as <u>Kajal Chandra Laskar</u>
W.A. 186 of 2022 Along with W.P.(C) No. 176 of 2021 AMC v. Gita Deb (Ganguly)	W.P. (C) No. 126 of 2021	• Date of Appointment- 04.10.1980 (MR Worker) • Regularized- • Date of Retirement- 31.01.2015 (UDC) • Total Period of Service- 35 years • Basic Pay- Rs. 20,090/- • D.A.- Rs. 13,862/- • Amount sanctioned till date - Rs. 3,31,485/- • Entitled amount of gratuity- Rs.6,85,569/- (as provided by the Single Judge Bench)
W.A. 187 of 2022 Along with W.P.(C) No. 174 of 2021 AMC v. Sekhar Bhattacharjee	W.P. (C) No. 126 of 2021	• Date of Joining- 16.08.1974 (as Tax Collecting Sarkar) • Regularized- • Date of Retirement- 31.01.2011 • Total Period of Service- • Total Period of Service- 37 years • Basic Pay- Rs. 19,520 • D.A.- Rs. 4685 • Entitled amount of gratuity- Rs.5,16,683/- (as provided by the Single Judge Bench) • Amount sanctioned- Rs.3,22,080/-
W.A. 188 of 2022 Along with W.P.(C) No. 130 of 2021 AMC v. Santi Rani Kalai	W.P. (C) No. 126 of 2021	• Date of Joining- 20.10.1981 (Upper Division Clerk) • Regularized- • Date of Retirement- 31.07.2012 (as office Superintendent) • Total Period of Service- • Basic Pay- Rs. 21,770 • D.A.- Rs. 7620 • Entitled amount of gratuity- Rs.5,25,628/- (as provided by the Single Judge Bench) • Sanctioned – Rs.3,37,435/-
W.A. 189 of 2022 Along with W.P.(C) No. 131 of 2021 AMC v. Salil Deb	W.P. (C) No. 218 of 2021	• Date of Joining- 11.07.1988 (joined as Muster Roll worker/ DRW) • Regularized- 01.11.2007 • Date of Retirement- 30.06.2015 • Total Period of Service- 17 yars. • Basic Pay- Rs. 10,280 • D.A.- Rs. 7093 • Entitled amount of gratuity- Rs.1,70,389 (as provided by the Single Judge Bench) • Sanctioned – Rs.89,632/-
W.A. 190 of 2022 Along with W.P.(C) No. 172 of 2021 AMC v. Bijoy Choudhuri	W.P. (C) No. 218 of 2021	• Date of Joining- 03.06.1976 (joined as Muster Roll worker) • Regularized- 01.01. 1979 (as LDC) • Date of Retirement- 31.10.2011 • Total Period of Service- • Basic Pay- Rs. 17,600 • D.A.- Rs. 4752 • Entitled amount of gratuity- Rs.4,25,547/- (as provided by the Single Judge Bench)
W.A. 191 of 2022 Along with W.P.(C) No. 126 of 2021 AMC v. Bhaskar Debbarma	W.P. (C) No. 126 of 2021	• Date of Joining- 20.10.1981(as LDC-temporary basis) • Regularized- • Date of Retirement- 30.09.2016 (as Office Superintendent- superannuation) • Total Period of Service- 35 years. • Basic Pay- Rs. 25400 • D.A.- Rs. 21082

		- Entitled amount of gratuity- Rs.9,83, 578 (as provided by the Single Judge Bench) - Sanctioned – Rs.4,00,000/-
W.A. 192 of 2022 Along with W.P.(C) No. 179 of 2021 AMC v. Pranab Nandi	W.P. (C) No. 218 of 2021	- Date of Joining- 26.11. 1987 - Regularized- 27.01.2004 - Date of Retirement- 31.01.2015 (Superannuation) - Total Period of Service- - Basic Pay- Rs. 20,820/- - D.A.- Rs. 14366/- - Entitled amount of gratuity- Rs.3,85,692/- (as provided by the Single Judge Bench) - Received amount till date – Rs.1,97,790/-
W.A. 193 of 2022 Along with W.P.(C) No. 132 of 2021 AMC v. Jalal Ahmed	W.P. (C) No. 218 of 2021	- Date of Joining- 01.06.1976 (as Muster Roll Worker) - Regularized- 01.01.1979 (to post of Work Assistant) - Date of Retirement- 30.06.2014 - Total Period of Service- 35 years. - Basic Pay- Rs. 19,850 - D.A.- Rs. 11,315 - Entitled amount of gratuity- Rs.6,29,293/- (as provided by the Single Judge Bench) - Received amount – Rs.3,27,525/-
W.A. 194 of 2022 Along with W.P.(C) No. 127 of 2021 AMC v. Dibakar Choudhury	W.P. (C) No. 126 of 2021	- Date of Joining- 18.11.1981 (as UDC) - Regularized- - Date of Retirement- 31.01.2016 - Total Period of Service- 35 years. - Basic Pay- Rs. 26,910 - D.A.- Rs. 1,99,13 - Amount sanctioned till date - Rs.4,00,000 /- - Entitled amount of gratuity- Rs.9,45,464/- (as provided by the Single Judge Bench)
W.A. 195 of 2022 Along with W.P.(C) No. 169 of 2021 AMC v. Krishna Gopal Dey	W.P. (C) No. 218 of 2021	- Date of Joining- 04.08.1976 - Regularized- 28.02.1979 - Date of Retirement- 30.04.2015 - Total Period of Service- 36 years - Basic Pay- Rs. 12,920/- - D.A.- Rs. 8,915 - Amount sanctioned till date - Rs. 2,13,180 /- - Entitled amount of gratuity- Rs.4,53,496/- (as provided by the Single Judge Bench)
W.A. 196 of 2022 Along with W.P.(C) No. 134 of 2021 AMC v. Dipak Kumar Nandi	W.P. (C) No. 218 of 2021	- Date of Joining- 01.04.1976 - Regularized- 28.02. 1979 - Date of Retirement- 31.10.2011 - Total Period of Service- 33 years - Basic Pay- Rs. 17,600/- - D.A.- Rs. 4,752/- - Amount sanctioned till date - Rs. 2,90,400/- - Entitled amount of gratuity- Rs.4,25,547/- (as provided by the Single Judge Bench)
W.A. 197 of 2022 Along with W.P.(C) No. 125 of 2021 AMC v. Milan Chakraborty	W.P. (C) No. 218 of 2021	- Date of Joining- 04.02.1977 - Regularized- 04.10.1980 - Date of Retirement- 31.01.2017 - Total Period of Service- 40 years - Basic Pay- Rs. 24,610/- - D.A.- Rs. 21,657/- - Amount sanctioned till date - Rs.4,00,000/- - Entitled amount of gratuity- Rs.10,67,700/- (as provided by the Single Judge Bench)
W.A. 198 of 2022 Along with W.P.(C) No. 178 of 2021 AMC v. Geeta Paul (Biswas)	W.P. (C) No. 218 of 2021	- Date of Joining- 11.04.1988 - Regularized- 26.10.1990 - Date of Retirement- 31.10.2019 - Total Period of Service- 30 years - Basic Pay- Rs. 49,200/- - D.A.- Rs. Not mentioned. - Amount sanctioned till date- Rs. 5,35,050/- (Paid) - Entitled amount of gratuity- Rs.8,51,538/- (as provided by the Single Judge Bench)
W.A. 199 of 2022 Along with W.P.(C) No. 171 of 2021 AMC v. Nitai Majumder	W.P. (C) No. 218 of 2021	- Date of Joining- 01.04.1973 (MR worker) - Promotion- 20.09.1978 (Driver) - Date of Retirement- 31.10.2014 - Total Period of Service- 38 years - Basic Pay- Rs. 19,870/- - D.A.- Rs. 12,717/- - Amount sanctioned till date - Rs. 3,27,855/- - Entitled amount of gratuity- Rs.7,14,407/- (as provided by the Single Judge Bench)
W.A. 200 of 2022	W.P. (C) No. 218 of 2021	Date of Joining- 03.05.1988

Along with W.P.(C) No. 128 of 2021 AMC v. Shimal Chandra Saha		- Regularized- 26.10.1990 - Date of Retirement- 31.01.2012 - Total Period of Service- 23 years - Basic Pay- Rs. 12,280/- - D.A.- Rs. 3,684/- - Amount sanctioned till date - Rs. 1,38,150/- - Entitled amount of gratuity- Rs.2,11,830/- (as provided by the Single Judge Bench)
W.A. 201 of 2022 Along with W.P.(C) No. 415 of 2021 AMC v. Nitai Dey	W.P. (C) No. 126 of 2021	- Date of Joining- 01.01.1979 (LDC) - Regularized- - Date of Retirement- 30.04.2015 - Total Period of Service- 36 years - Basic Pay- Rs. 23,510/- - D.A.- Rs. 16,222/- - Amount sanctioned till date - Rs. 3,87,915/- - Entitled amount of gratuity- Rs.8,25,203/- (as provided by the Single Judge Bench)
W.A. 202 of 2022 Along with W.P.(C) No. 129 of 2021 AMC v. Dilip Acharjee	W.P. (C) No. 126 of 2021	- Date of Joining- 21.08.1974 - Regularized- 21.06.1978 - Date of Retirement- 30.04.2016 - Total Period of Service- 41 years - Basic Pay- Rs. 19,000/- - D.A.- Rs. 15,010/- - Amount sanctioned till date - Rs. - Received amount till date- Rs. 3,13,500/- - Entitled amount of gratuity- Rs.8,04,467/- (as provided by the Single Judge Bench)
W.A. 203 of 2022 Along with W.P.(C) No. 177 of 2021 AMC v. Subhash Chandra Biswas	W.P. (C) No. 126 of 2021	- Date of Joining- 28.02.1979 - Regularized- - Date of Retirement- 30.09.2015 But in the writ petition before the Ld. Judge- 30.09.2015 - Total Period of Service- 36 Years - Basic Pay- Rs. 27,460 - D.A.- Rs. 20,320 - Received amount till date- Rs. 4,00,000/- - Entitled amount of gratuity- Rs.9,92,353/- (as provided by the Single Judge Bench)
W.A. 204 of 2022 Along with W.P.(C) No. 133 of 2021 AMC v. Gopal Chandra Sen	W.P. (C) No. 218 of 2021	- Date of Joining- 11.02.1977 - Regularized- 04.10.1980 - Date of Retirement- 30.06.2015 - Total Period of Service- 36 years - Basic Pay- Rs. 23,190 - D.A.- Rs. 16,001 - Received amount received till date- Rs. 3,82,635/- - Entitled amount of gratuity- Rs.8,13,966/- (as provided by the Single Judge Bench)
W.A. 205 of 2022 Along with W.P.(C) No. 135 of 2021 AMC v. Suchitra Paul (Saha)	W.P. (C) No. 218 of 2021	- Date of Joining- 23.04.1976 (mentioned in W.P. (C) no.135 of 2021) - Regularized- 01.01.1979 - Date of Retirement- 30.09.2015 - Total Period of Service- 37 years - Basic Pay- Rs. 24,300/- - D.A.- Rs. 17,982/- - Received amount received till date- Rs. 4,00,000/- - Entitled amount of gratuity- Rs.9,02,558/- (as provided by the Single Judge Bench)
W.A. 206 of 2022 Along with W.P.(C) No. 173 of 2021 AMC v. Raghunath Sarkar (husband)	W.P. (C) No. 218 of 2021	- Date of Joining- 27.10.1988 - Regularized- 01.09.2000 - Date of Retirement- 31.07.2014 - Death of the employee- 30.08.2017 (Wife) - Total Period of Service- 20 Years - Basic Pay- Rs. 9,700/- - D.A.- Rs. 6,208/- - Received amount received till date- Rs. 77,600/- - Entitled amount of gratuity- Rs.1,83,553/- (as provided by the Single Judge Bench)
W.A. 207 of 2022 Along with W.P.(C) No. 170 of 2021 AMC v. Badal Kumar Choudhuri	W.P. (C) No. 218 of 2021	- Date of Joining- 03.05.1988 - Regularized- 26.10.1990 - Date of Retirement- 31.04.2014 - Total Period of Service- 25 Years - Basic Pay- Rs. 14,150/- - D.A.- Rs. 8,066/- - Entitled amount of gratuity- Rs.3,20,423/- (as provided by the Single Judge Bench) - Sanctioned amount – Rs.1,76,875/-

W.A. 29 of 2023 Along with W.P.(C) No. of 2021 AMC v. Samir Kumar Ghosh	W.P. (C) No. 204 of 2021	• Date of Joining- 01.01.1976 • Regularized- • Date of Retirement- 31.12.2015 • Total Period of Service- 40 years • Basic Pay- Rs. 25,030/- • D.A.- Rs.18,522/- • Received amount till date as gratuity- Rs. 8,14,190/-
W.P.(C) No. 599 of 2023 Rubi Dutta Deb v. The State of Tripura	Under Article- 226 of Constitution Of India	Petitioner no.1- Smt. Rubi Datta Deb • Date of Joining- 01.03.1979 (LDC) • Regularized- • Date of Retirement- 31.10.2016 (UDC) • Total Period of Service- 37 Years • Basic Pay- Rs. 24,610/- • D.A.- Rs. 20,426/- • Amount sanctioned till date- Rs. 3,00,000/- • Entitled amount of gratuity- Rs.9,61,345/- (Claim by petitioner based 9% p.a.) Petitioner no.2- Ashim Baran Datta • Date of Joining- 01.01.1979 (LDC) • Regularized- • Date of Retirement- 29.02.2016 (Head Clerk) • Total Period of Service- 37 Years • Basic Pay- Rs. 24,300/- • D.A.- Rs. 17,982/- • Amount sanctioned till date - Rs. 3,00,000/- • Entitled amount of gratuity- Rs. 9,02,558/- (Claim by petitioner based 9% p.a.) Petitioner no.3- Chandra Sekhar Deb • Date of Joining- 22.04.1976 (LDC) • Regularized- • Date of Retirement- 31.01.2012 (Head Clerk) mentioned writ petition Note: Annexure-24 mentions 31.07.2012 • Total Period of Service- 36 Years • Basic Pay- Rs. 19,650/- • D.A.- Rs. 6,878/- • Amount sanctioned till date- Rs. 2,43,169/- • Entitled amount of gratuity- Rs. 5,50,966/- (Claim by petitioner based 9% p.a.) Note: No annexure could be found in the case of this petitioner except for Annex-12 i.e., the sanctioned order of gratuity. Petitioner no.4 Nishi Kanta Sinha • Date of Joining- 01.01.1979 (LDC) • Regularized- 28.02.2012 • Date of Retirement- 28.02.2012 (mentioned in W.P) Note: Annexure-25 mentions 31.08.2012 • Total Period of Service-33 Years • Basic Pay- Rs. 18,130/- • D.A.- Rs. 6,346/- • Amount sanctioned till date- Rs. 2,24,359/- • Entitled amount of gratuity- Rs. 4,65,985/- (Claim by petitioner based 9% p.a.) Petitioner no.5- Jiban Kumar Saha • Date of Appointment- 01.01.1979 • Regularized- • Date of Retirement- 31.03.2010 • Total Period of Service- 32 Years • Basic Pay- Rs. 17,080/- • D.A.- Rs. 4,099/- • Amount sanctioned till date- Rs. 68,321/- • Entitled amount of gratuity- Rs. 3,90,996/- (Claim by petitioner based 9% p.a.)

[13] The basic premise of challenge in this round of litigation by the Corporation which has earlier followed and complied with the decision rendered by the Writ Court in case of *Sri Samir Kumar Ghosh (supra)* in WP(C) No.1091/2017 as upheld in Writ Appeal No.185 of 2020 is based on the notification dated 21.12.1991 issued by the State Government. It is their case

that this notification applying the CCS (Pension) Rules, 1972, is a conscious exercise of power under Section 5 by the appropriate government i.e. the State Government to exempt the AMC from the applicability of ‘the Act of 1972’. For better appreciation, the notification dated 21.12.1991 is extracted in extenso hereinafter:

“Government of Tripura
Local Self Government Department

No.F.14(6)-LSG/83 Dated, Agartala, the 21.12.1991.

Notification

Whereas the Agartala Municipality has proposed for the approval of the State Government to the adoption of the Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) for the officers and employees of the Agartala Municipality;

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 69 of the Bengal Municipal Act, 1932, as extended to Tripura, the State Government is hereby pleased to approve the Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura), as amended upto-date and as may be amended by the Government of Tripura in future, for being adopted and applied for the officers and employees of the Agartala Municipality subject to the notifications, and terms and conditions as specified hereinafter, namely:-

1. (1) Whenever an expression mentioned in column 1 of the Table given hereunder occurs in the Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) (hereinafter referred to as the Principal Rules), then, unless the context otherwise requires, there shall be substituted therefore the expression set opposite to it in column 2 of the said Table, and there shall also be made in any sentence in which that expression occurs such consequential amendment as Rules of grammar may require:-

T A B L E

1	2
(i) Governor	Commissioner of the Agartala Municipality at a duly convened meeting.
(ii) Government of Tripura.	Agartala Municipality.
(iii) State Government.	Agartala Municipality.
(iv) State of Tripura.	Agartala Municipality.
(v) Government.	Agartala Municipality.
(vi) State Service.	Service of the Agartala Municipality.
(vii) Civil Service.	Service of the Agartala Municipality.
(viii) Consolidated Fund.	Municipal Fund.
(ix) Finance Department.	Commissioners of the Agartala Municipality in a duly convened meeting.
(x) Government Servant.	Officer and employee of the Agartala Municipality.

(2) In the Principal Rules, the words “Tripura Public Service Commission” wherever they occur shall be deleted.

2. In the Principal Rules, for sub-rule (2) of rule-1, the following sub-rule shall be substituted, namely :-

“(2) They shall be deemed to have come into force on and from the first day of January, 1992”.

3. In the Principal Rules, in sub-rule (1) of rule 3, (a) for clause (a), the following clause shall be substituted, namely:-

“(a) ‘Audit Officer’ means the authority who authorizes disbursement of pay and allowances of the officers and employees of the Agartala Municipality;”;

(b) for clause (j), the following clause shall be substituted, namely:-

“(j) ‘Head of Department’ means the Chairman of the Agartala Municipality;”;

(c) for clause (k), the following clause shall be substituted, namely :-

“(k) ‘Head of Office’ means the Executive Officer of the Agartala Municipality;” and

(d) for clause (r), the following clause shall be substituted, namely :-

“(r) ‘Treasury’ shall include a sub-treasury or, in the fund of the Municipality is kept in a Bank, the Bank in which the fund is kept in accordance with rules;”;

4. The Central Civil Services (Pension) Rules, 1972 (as adopted in the State of Tripura) and as modified and approved for adoption by this Notification in its application to the officers and employees of the Agartala Municipality may be called the Central Civil Services (Pension) Rules, 1972 (as adopted for the Agartala Municipality).

5. The officers and employees who enter the service of the Agartala Municipality on or after the date of commencement of the Central Civil Services (Pension) Rules, 1972 (as adopted for the Agartala Municipality) shall automatically come under the purview of these Rules.

6. (1) Every officer and employee of the Agartala Municipality shall have the right to exercise option as to whether he will come under the Central Civil Services (Pension) Rules, 1972 (as adopted for the Agartala Municipality) or will continue to be governed by the Agartala Municipal Provident Fund Rules, 1967. The option shall be exercised within ninety days from the date of issue of notice by the Agartala Municipal Authority, provided that in the case of an officer and employee who is on leave or on deputation or on foreign service or under suspension on the date of issue of the notice in this regard, the said option shall be exercised not later than ninety days of the date of his return from such leave, deputation, foreign service or resumption of duty after suspension as the case may be.

(2) An officer and an employee of the Agartala Municipality shall opt either-

(a) to retain the Contribution of the Agartala Municipality with interest thereon under the Agartala Municipal Provident Fund Rules, 1967; or

(b) to refund to the Agartala Municipality the monetary benefits referred to in clause (a) or to forgo the same if they have not been paid to him and count, in lieu thereof, the service for pension for which the aforesaid monetary benefits may have been payable.

(3) The officer or employee who exercises option under clause (a) to retain the monetary benefits referred to therein, shall not be entitled to count his service for pension for which such monetary benefits have been paid.

(4) In case an officer or an employee does not exercise option within the specified period of ninety days, he shall automatically come under these Rules.

(5) The option under sub-para (1) and sub-para (2) shall be exercised in the prescribed form appended to this Notification and shall be submitted to the Municipal Authority.

(6) The option once exercised shall be final.

7. The Establishment Branch of the Finance Department, Government of Tripura shall be responsible for checking and authorizing payment of retirement benefits to the officers and employees of the Agartala Municipality.

8. The power of interpretation of the Central Civil Services (Pension) Rules, 1972 (as adopted for the Agartala Municipality) shall vest in the Finance Department of the Government of Tripura.

By Order of the Governor,
Sd/-
SECRETARY TO THE
GOVERNMENT OF TRIPURA.”

[14] Section 5 of the Payment of Gratuity Act 1972 is quoted hereunder:

“Power to exempt

(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment, factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(2) The appropriate Government may, by notification and subject to such conditions as may be specified in the notification, exempt any employee or class of employees employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act, if, in the opinion of the appropriate Government, such employee or class of employees are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

(3) A notification issued under sub-section (1) or sub-section (2) may be issued retrospectively a date not earlier than the date of commencement of this Act, but no such notification shall be issued so as to prejudicially affect the interests of any person”.

[15] The notification dated 21.12.1991 has been issued in exercise of the powers conferred under sub-section (1) of Section 69 of the Bengal Municipal Act, 1932 as extended to Tripura whereby the State Government has approved the adoption and application of the CCS (Pension) Rules, 1972 as amended up to that date to the officers and employees of the Agartala Municipality subject to the modifications, and terms and conditions as specified thereafter. A notification under Section 5 of ‘the Act of 1972’ by the appropriate government contemplates a conscious decision to exempt any establishment from the operation of the provisions of the Act if in the opinion of the appropriate government the employees in such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. For a notification to satisfy the ingredients of Section 5 of ‘the Act of 1972’, the relevant factor which is to be taken into consideration is whether the officers and employees of the AMC were in receipt

of gratuity or pensionary benefits which were not less favourable than the benefits conferred under the Act of 1972. An argument has been raised that mere non mentioning of such a provision in the notification could not denude the appropriate government from a valid exercise of power under ‘the Act of 1972’ to exempt the AMC, but a bare perusal of this notification leaves no element of doubt that the adoption of Pension Rules to the employees of AMC under Section 69 of the Bengal Municipal Act, 1932 is not an exercise of exemption by the State Government under Section 5 of ‘the Act of 1972’. No such consideration either is evident from perusal of the notification.

[16] The power of the State Government to issue such an exemption notification is not in dispute. That the Central Government under Section 2(3)(c) has the power to notify such establishments as are covered by the provisions of Payment of Gratuity Act, 1972 is also not in dispute. The relevant notification of the Central Government dated 8th January, 1982 has also been referred to by the appellate Court in Case of *Sri Samir Kumar Ghosh* (*supra*) and is extracted hereunder:

“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.”

[17] This proposition finds further force from the decision of the Apex Court in case of *Nagar Ayukt Nagar Nigam, Kanpur* (*Supra*) which has also been relied upon by the learned writ court and the Appellate Court in case of *Samir Kumar Ghosh Vs. Agartala Municipal Corporation* (*supra*). The relevant paragraphs of the decisions in case of *Nagar Ayukt Nagar Nigam, Kanpur* (*supra*) are being reproduced hereunder:

“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.

(2) 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 (1) (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, 8th 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.”

12. In view of Section 14 of the Act, the provision in the State Act contemplating payment of Gratuity will be inapplicable in respect of the employees of the local bodies.

13. Section 2(e) of the Act alone was referred to in the judgment reported as MCD. The said judgment is in the context of CCS (Pension) Rules, 1972 which specifically provides for payment of Pension and Gratuity. The Act is applicable to the Municipalities, therefore, it is wholly inconsequential even if there is no reference to the notification dated 08.01.1982.

14. The entire argument of the appellant is that the State Act confers restrictive benefit of gratuity than what is conferred under the Central Act. Such argument is not tenable in view of Section 14 of the Act and that liberal payment of gratuity is in fact in the interest of the employees. Thus, the gratuity would be payable under the Act. Such is the view taken by the Controlling Authority.”

[18] In the said case, the Apex Court had taken note of the overriding provisions under Section 14 of the Act of 1972 and held that the provisions of the State Act contemplating payment of gratuity will be inapplicable in respect of the employees of the local bodies i.e. the Municipal Corporation, Kanpur. It was pleaded on behalf of the Municipal Corporation, Kanpur that in terms of Section 3 of the U.P Dookan Aur Vanijya Adhishthan Adhiniyam, 1962, the Act of 1972 was inapplicable to government or local bodies. We find that reference to the notification dated 21.12.1991 has been made in the decision of the learned Writ Court in case of *Sri Samir Kumar Ghosh (supra)* in WP(C) No.1091/2017 dated 29.05.2020. On challenge, the Appellate Court affirmed the judgment in case of *Sri Samir Kumar Ghosh (supra)* and the same stood complied by the Corporation. Whether still it is open for the Corporation to contend that the decision in case of *Sri Samir Kumar Ghosh (supra)* is per incuriam as it failed to take into account the notification dated 21.12.1991, is a moot question. However, on being raised in this batch of writ appeals, we have considered it proper to examine this contention in greater detail as apparently the decision in case of *Sri Samir Kumar Ghosh (supra)* in so many words did not proceed to hold that the notification dated 21.12.1991 was not in the nature of an exemption under Section 5 of ‘the Act of 1972’. In this regard, we deem it proper to rely upon the case of *Municipal Corporation of Delhi versus Dharam Prakash Sharma and another, (1998) 7 SCC 221* wherein the Apex Court had the occasion to consider whether an employee of the Municipal Corporation of Delhi (MCD) would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD had adopted the provisions of the CCS (Pension)

Rules, 1972, whereunder there was a provision both for payment of pension as well as of gratuity. The question has been answered at paragraph-2 of the judgment which is extracted hereunder as it answers any doubt about the applicability of CCS (Pension) Rules 1972 to the employees of AMC in the absence of a notification by the State Government in exercise of the powers under Section 5 of the Act of 1972. The paragraph-2 of the said judgment is extracted hereunder:

“2. The short question that arises for consideration is whether an employee of the MCD would be entitled to payment of gratuity under the Payment of Gratuity Act when the MCD itself has adopted the provisions of the CCS (Pension) Rules, 1972 (hereinafter referred to as "the Pension Rules"), whereunder there is a provision both for payment of pension as well as of gratuity. The contention of the learned counsel appearing for the appellant in this Court is that the payment of pension and gratuity under the Pension Rules is a package by itself and once that package is made applicable to the employees of the MCD, the provisions of payment of gratuity under the Payment of Gratuity Act cannot be held applicable. We have examined carefully the provisions of the Pension Rules as well as the provisions of the Payment of Gratuity Act. The Payment of Gratuity Act being a special provision for payment of gratuity, unless there is any provision therein which excludes its applicability to an employee who is otherwise governed by the provisions of the Pension Rules, it is not possible for us to hold that the respondent is not entitled to the gratuity under the Payment of Gratuity Act. The only provision which was pointed out is the definition of "employee" in Section 2(e) which excludes the employees of the Central Government and State Governments receiving pension and gratuity under the Pension Rules but not an employee of the MCD. The MCD employee, therefore, would be entitled to the payment of gratuity under the Payment of Gratuity Act. The mere fact that the gratuity is provided for under the Pension Rules will not disentitle him to get the payment of gratuity under the Payment of Gratuity Act. In view of the overriding provisions contained in Section 14 of the Payment of Gratuity Act, the provision for gratuity under the Pension Rules will have no effect. Possibly for this reason, Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. Admittedly MCD has not taken any steps to invoke the power of the Central Government under Section 5 of the Payment of Gratuity Act. In the aforesaid premises, we are of the considered opinion that the employees of the MCD would be entitled to the payment of gratuity under the Payment of Gratuity Act notwithstanding the fact that the provisions of the Pension Rules have been made applicable to them for the purpose of determining the pension. Needless to mention that the employees cannot claim gratuity available under the Pension Rules.”

[19] The Apex Court has held that the mere fact that the gratuity is provided for under the Pension Rules will not disentitle the employee to get the payment of gratuity under the Payment of Gratuity Act in view of the overriding provisions of Section 14 of the Payment of Gratuity Act. The provision of gratuity under the Pension Rules will have no effect. The Apex

Court further held that possibly for this reason Section 5 of the Payment of Gratuity Act has conferred authority on the appropriate Government to exempt any establishment from the operation of the provisions of the Act, if in its opinion the employees of such establishment are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act. i.e. 'the Act of 1972'. In the present case also the appropriate Government that the State Government has not invoked the power under Section 5 of the Payment of Gratuity Act, 1972 to exempt the AMC from the cover of 'the Act of 1972' as held hereinabove.

[20] That, the Payment of Gratuity Act, 1972 is a beneficial piece of legislation is no longer a matter of dispute or construction. The Apex Court in Case of *Allahabad Bank and another versus All India Allahabad Bank Retired Employees Association* reported in (2010) 2 SCC 44 has also held so at paragraph-16 of the judgment which is extracted hereunder:

"16. We shall proceed to examine the point urged by the learned counsel for the appellant. Remedial statutes, in contradistinction to penal statutes, are known as welfare, beneficent or social justice oriented legislations. Such welfare statutes always receive a liberal construction. They are required to be so construed so as to secure the relief contemplated by the statute. It is well settled and needs no restatement at our hands that labour and welfare legislation have to be broadly and liberally construed having due regard to the Directive Principles of State Policy. The Act with which we are concerned for the present is undoubtedly one such welfare oriented legislation meant to confer certain benefits upon the employees working in various establishments in the country".

[21] As held therein, 'the Act of 1972' is a beneficent or social justice oriented legislation which deserves a liberal construction as it is intended to secure the relief contemplated by the statute in favour of a whole class of employees having regard to the Directive Principles of State Policy. It is not for the AMC to decide whether the provisions of Pension Rules, 1972 or the provisions of Payment of Gratuity Act, 1972 are less or more favourable to the employees. The responsibility is upon the State Government. The State Government had the power to exempt the Corporation in exercise of the powers

under Section 5 of the Act of 1972. We find that no such exercise has been done. The decision in case of *Allahabad Bank and another* (supra) also reiterates the well settled position that obligation to pay gratuity in absence of exemption from appropriate government continues to exist even if pension is being paid by the establishment under an existing scheme and even if it is more attractive than the benefits admissible under the Act by virtue of non obstante provision of Section 14 which has an overriding effect. It is for the appropriate government to form requisite opinion that employees were in receipt of gratuity or pensionary benefits which were more favourable than benefits conferred under the Act and, therefore, the establishment must be exempted from the operation of the provisions of the Act. The basic premise on which these appeals are based, therefore, fails. We have no doubt that in the absence of an exemption notification by the State Government under Section 5 of the Act of 1972, AMC has a statutory obligation to pay gratuity under the Act of 1972. It is not for the AMC to compare whether the terms of gratuity under the Pension Rules are less or more favorable than what is provided under the Act of 1972 and the notifications enhancing the ceiling of gratuity from time to time issued by the Central Government.

[22] Having held so, the next ancillary questions which have been raised by the appellant-Corporation also need to be answered hereinafter. The appellants contend that some of the writ petitioners have accepted gratuity under the Pension Rules, 1972 and, therefore, they are estopped from seeking benefits under the Act of 1972. Appellants also contend that many of these writ petitioners have superannuated long back in the year 2011/2012/2015/2018 but have approached the Writ Court for payment of Gratuity under the Act of 1972 as per the enhanced ceiling limit even after accepting the benefit of gratuity

under the Pension Rules. A party, who does not approach the Court in time, does not deserve to be granted the relief. It is also contended that under Section 7 of the Act of 1972 the employee has to first make an application before the employer within such time as may be prescribed in the form. The Rule 7 provides that such an application is to be made within 30 days from the date on which the gratuity becomes payable. The proviso thereto provides that if the gratuity is claimed upon superannuation or retirement the same application ought to be made 30 days before the date of superannuation or retirement. It is pointed out that under Section 7(2) and (3) of the Act, the employer has to determine the amount of gratuity as soon as gratuity becomes payable and give a notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined. The employer has to arrange to pay the amount of gratuity within 30(thirty) days from the date it becomes payable to the person to whom the gratuity is payable. If the gratuity is not paid as contemplated under Section 7 sub-section 3 within the period specified therein the employer shall have to pay gratuity from the date on which the gratuity becomes payable to the date on which it is paid with simple interest at the rate not exceeding the rate notified by the Central Government from time to time for re-payment of long term deposits. However, the employer can seek permission in writing from the controlling authority for exemption from payment of interest if the delay in payment is due to the fault of the employee. It is argued by learned counsel for the Corporation that none of the writ petitioners have approached the employer in a prescribed format for payment of gratuity. As such, interest, if any, on the delay in payment of gratuity should not be allowed in favour of such petitioners. Learned counsel for the Corporation has also sought to distinguish the decision of the Apex

Court in case of *Allahabad Bank and another* (*supra*) relied upon by the writ petitioners.

[23] We have conferred anxious consideration to the arguments advanced on behalf of the Corporation, A statutory obligation is cast upon an establishment covered under Section 2(3) (c) of the Act of 1972, like the Corporation herein, to make payment of gratuity to its employees. The Corporation is exempted from making such payment under the Act of 1972 only if the appropriate Government i.e. the State Government in this case by a conscious exercise of power under Section 5 of the Act of 1972 exempted the Corporation from the applicability of the Act of 1972. We have held that there is no such exemption granted by the State Government in favour of the Corporation.

[24] The aforesaid position is further reinforced from the decisions referred to hereinabove specifically in case of *Municipal Corporation of Delhi Versus Dharam Prkash Sharma and another* and in case of *Nagar Ayukt Nagar Nigam, Kanpur* (*supra*). Such position is also strengthened by the decision rendered in case of *Allahabad Bank and another* (*supra*) which we have referred to hereinbefore. If there is no exemption notification under the Act of 1972, the Corporation was under a statutory liability to pay gratuity in terms of the Act of 1972 and not under the provisions of the CCS (Pension) Rules under which payments have been made to some of the writ petitioners. This Court is of the opinion that non filing of an application under Rule 7 in terms of Section 7 of the Payment of Gratuity Act, 1972 could not absolve the Corporation of the liability to make payment of gratuity under the Act of 1972 to its employees. In this regard we may profitably refer to the opinion of the

Bombay High Court in case of *H. Jayarama Shetty* (supra) at paragraph-11 which is extracted hereunder:

“11. The rules which were framed in 1972 must be read in a manner which is consistent with the statutory provisions of Section 7 particularly after the amendments that were introduced by Amending Act 25 of 1984 (with effect from 1st April 1984) and by Amending Act 22 of 1987 (with effect from 1st October 1987). The provisions of Section 7 emphasise that the obligation is that of the employer to determine and to make arrangements for the payment of gratuity and upon his failure to do so, to pay interest at the rate which is statutorily prescribed. Even if the period that is prescribed in the Rules is taken into consideration, the Rules themselves lay down that the delay on the part of the employer, if any, can be condoned if sufficient cause is shown. A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. The Act is a piece of social welfare legislation and the employer cannot be permitted by reason of his own default in complying with his obligation to defeat the just entitlement of the employee. Finally, it may be noted that the employer has to determine and pay gratuity whether or not an application is filed to him. The filing of an application before the employer is not a condition precedent. Rule 7 makes procedural provisions for such an application. On receipt of an application under Rule 7, the employer has to issue a notice under Rule 8 either admitting the claim or to specify the reasons why he holds the claim inadmissible. It is thereafter that time is prescribed in Rule 10 for an application to the Controlling Authority. The making of an application under Rule 7 therefore invokes a chain of events in Rules 8 and 10. Once the making of an application to the employer is not mandatory under the provisions of Section 7(2) of the substantive provisions of the act, the limitation under the Rules which is triggered upon the filing of the application under Rule 7 can obviously not defeat the claim of the employee”.

[25] The learned Court held that rules have to be read in a manner which is consistent with the statutory provisions of Section 7 particularly after the amendments that were introduced by Amending Act 25 of 1984 and by Amending Act 22 of 1987. A breach of the employer to comply with his obligation under section 7 provides a recurring and continuous cause of action. If that be so, mere delay in approaching the Court on the part of any of the writ petitioners cannot defeat their statutory right to receive gratuity under the Act of 1972 nor can absolve the Corporation from discharging its statutory obligation to make payment of gratuity in terms of the Act of 1972. Since there is no exemption under Section 5 of the Act of 1972 in favour of the AMC by the State Government, any payment made by the Corporation under the Pension Rules and accepted by individual writ petitioners would not absolve the Corporation from the liability to make payment of the due amount of gratuity to

such employee after adjusting the amount already paid. There cannot be estoppels against the mandate of the statute, i.e. the Act of 1972.

[26] We find that the learned Writ Court in case of *Sri Samir Kumar Ghosh* (*supra*) had, at the first instance, also taken such a view that payments made, if any, in favour of the employees were to be made after deducting the gratuity already paid with the revised ceiling limit of Rs.10,00,000/- in that case. The position in law is quite clear that employees retiring after 24.05.2010 would be entitled to the enhanced ceiling limit of gratuity of Rs. 10,00,000/- and those retiring after 29.03.2018 would be entitled to the revised ceiling limit of gratuity of Rs.20,00,000/- . Therefore, the AMC is required to calculate the admissible gratuity in terms Section 4(2) of 'the Act of 1972'. The Corporation shall determine the admissible dues under the head of gratuity in such manner in the cases of individual writ petitioners on the basis of the last wages of the employee in terms of Section 2(s) read with Section 4(2) of 'the Act of 1972'. The Corporation shall make payment of admissible gratuity to the individual writ petitioners after deducting the amount already paid within a period of 5(five) months from the date of receipt of copy of this judgment along with simple interest @ 6% per annum upon completion of one month from the date of superannuation till actual payment.

[27] In the result, the writ appeals are dismissed. The case of the writ petitioners in Writ Petition No.599 of 2023 shall also be governed by the judgment in the batch of these writ appeals.

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

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

Munna S