

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA. No.01 of 2024

The State of Tripura and Others. Appellants

_V_E_R_S_U_S_

Shri Bikash Roy Respondent

Connected with
WA. No.112 of 2024

The State of Tripura and Others. Appellants

_V_E_R_S_U_S_

Sri Sachindra Majumder Respondent

For Appellant(s)	:	Mr. P. R. Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate.
For the respondent(s)	:	Mr. D. Sarma, Addl. G.A.
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT

_F_I_N_A_L_O_R_D_E_R_

22.04.2025

Heard Mr. D. Sarma, learned Addl. G.A. appearing for the appellants also heard Mr. P. R. Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the respondents.

[2] This is an appeal [WA. No.01 of 2024] filed against the order dated 2nd December, 2021 passed in WP(C) No.617 of 2021 passed by this Court and also the judgment and order dated 24.04.2023 passed by this Court in Review Petition No.04 of 2022. The appeal [WA.No.112 of 2024] has been filed under Chapter-VIII, Rule-B (A) of the High Court of Tripura Rules, 2023 preferred against the order dated 20.01.2022 passed by the learned Single Judge in WP(C) No.308 of 2021. Both these appeals are clustered with for disposal by a common judgment and order as the issues involved in these appeals are similar in nature.

[3] The facts in brief in WA. No.01 of 2024 are that the writ petitioner in the writ petition, the appellant herein, seeks the necessary order/direction from this Court upon the respondents to cause full and final payment of gratuity to the petitioner, after adjusting the payment already made, and leave encashment benefit. On 29.02.1988, the petitioner was appointed as

Accountant on contract basis under the respondents. Thereafter, the service of the petitioner was regularized in the post of Lower Division Clerk by memo, dated 11.07.1988. The petitioner retired from service in the post of Accountant on attaining the age of superannuation w.e.f, 31.07.2020. The total period of service of the petitioner is 32 years and Rs. 65,490/- was the last basic pay of the petitioner. As such the petitioner is entitled to Rs. 12,09,046/- as full and final payment of gratuity. But, nothing has been paid to the petitioner. The petitioner is also entitled to cash payment of salary 300 days. But till date the petitioner has not been paid leave encashment. Hence, the writ petition was filed for rest amount of gratuity with interest and leave encashment benefit.

[4] The State had not filed any affidavit against the writ petition. The respondent No.3, Managing Director, Tripura Horticulture Corporation Limited had only filed a counter-affidavit before the writ Court. The respondent No.3 stated that due to resource crunch the corporation is unable to meet the expenditure towards payment of gratuity, leave encashment to its employees without any financial support from the State Government and subsequently, the writ petition was allowed by this Court.

[5] Thereafter, the State has preferred a review petition *inter alia* on the ground that the writ petitioner/respondent herein was not a regular employee of Tripura Horticulture Corporation Limited but was appointed temporarily on *ad hoc* basis vide office order dated 1st August, 1988. Being an *ad-hoc* employee he is not entitled for any retirement benefit like gratuity/leave salary etc. THCL is guided under Companies Act, 1956. THCL employees have CPF and thus, they are not similar to state govt. employees. But the Court dismissed the review petition on the ground that the instant stand taken by the petitioner-State that the writ petitioner was not a regular employee rather an *ad hoc* employee was never taken before the Writ Court. The respondent No. 3 (Managing Director, Tripura Horticulture Corporation Ltd.) in the writ petition has on the other hand taken a plea of resource crunch in meeting the expenditure towards post retirement benefits of the employees of the Corporation. Moreover, the learned Writ Court has only directed the respondent-authorities to take an appropriate decision in the light of the Government circulars and the discussions and observations made therein within a stipulated period.

[6] Hence, the present Appeal has been preferred by the appellant before this Court for redress.

[7] The facts in brief in WA. No.112 of 2024 are that the writ petitioner in the writ petition is seeking the necessary order/direction from the this Court upon the respondents to cause full and final payment of gratuity to the petitioner, after adjusting the payment already made, and leave encashment benefit. On 01-08-1988, the petitioner was appointed as casual worker under the respondents. Thereafter the service of the petitioner was regularized in the post of Orchard Worker on 08-01-2013. The petitioner retired from service in the same post on attaining the age of superannuation w.e.f, 31-05-2019. The total period of service of the petitioner is 19 years including the 50% of service rendered by the petitioner as Casual worker. Rs. 16,300/- was the last basic pay of the petitioner. As such the petitioner is entitled to Rs 1,78,673/-. But nothing has been paid to the petitioner. The Petitioner is also entitled to cash payment of salary 300 days. But till date, the petitioner has not been paid rest amount of gratuity with interest and leave encashment benefit.

[8] The State had not filed any affidavit against the writ petition. The respondent No.3, Managing Director, Tripura Horticulture Corporation Limited had only filed a counter-affidavit before the Writ Court. The respondent No.3 stated that due to resource crunch the Corporation is unable to meet the expenditure towards payment of gratuity, leave encashment to its employees without any financial support from the State Government. The employees of THCL is not entitled for leave encashment. After hearing Hon'ble High Court allowed the Writ petition.

[9] Thereafter the State had preferred a review petition *inter alia* on the ground that the order dated 24.04.2023 passed by the Court in Review Pet. No.04 of 2022 in case of State of Tripura and others versus Shri Bikash Roy which arose from WP(C) No.617 of 2021 dated 02.12.2021 the operative portion of which is of the same effect as that of the impugned judgment in the present review petitions. It is submitted that this Court after hearing learned counsel for the same review petitioners and learned counsel for the writ petitioners, proceeded to clarify the purport of the order passed therein. It is submitted that the impugned judgment relies upon certain decisions which

have also been taken note of in the order passed in Review Petition No.04 of 2022. The submission of learned counsel for the writ petitioners has also been taken note of that the respondents have only been directed by the impugned judgment to take a decision in view of the discussions and observations made in the light of the government circular issued from time to time within a stipulated period. The Court had however refused to review the impugned order therein as no apparent error on the face of record was found. In such circumstances, the review petitioners also seek an observation of this Court clarifying the purport of the impugned order on similar lines as observed at paragraph 6 of the order dated 24.04.2023 passed in Review Pet. No.04 of 2023. On 03-10-2024 the Review petitioner withdrew the review petition since the fate of the impugned order depends upon the outcome of the writ appeals pending before the learned Division Bench of this Court.

[10] Hence, the present appeal has been filed.

[11] Mr. D. Sarma, learned Addl. G.A. appearing for the petitioners has submitted that the learned Single Judge should have consider that the writ petitioner/ respondent herein was not a regular employee of Tripura Horticulture Corporation Limited but was appointed temporarily on *ad hoc* basis vide office order dated 1st August, 1988. Being an *ad hoc* employee he is not entitled for any retirement benefit like gratuity/ leave salary etc. It has been further contended that a review application would be maintainable on (i) discovery of new and important matters or evidence which, after exercise of due diligence, were not within the knowledge of the applicant or could not be produced by him when the decree was passed or the order made, (ii) on account of some mistake or error apparent on the fact of the record; (iii) for any other sufficient reason.

[12] He has submitted that from the service record as per entry in the service book, it seems that due to absence of proper Recruitment Rules for THCL, service remained as *ad hoc* and continued to officiate as same. The THCL has no policy regarding entitlement of leave encashment benefits towards its employees. Grant of leave salary/encashment thereof is a matter to be regularized by the employer by making of Recruitment Rules and in the instant case there is no service Rule/Regulations of the employer THCL

mandating grant of leave salary encashment to any of its employees. This strikes at the root of the writ petition whereby for want of any statutory right the writ petition should be dismissed in the thresh hold and the learned Single Judge should not have allowed the writ petition on merits.

[13] The learned Single Judge should have considered that in the THCL there is no statutory provision enabling to encashment of the leave or interest on leave encashment. In the absence of any specific Act or Rules and also in the absence of any policy or scheme enabling the petitioners for claiming of cash towards the earned leave, the writ petition is not maintainable. The learned Single Judge should have considered that THCL has never adopted any rule for enhanced gratuity and there is no provision for making the payment of cash towards the earned leave to its employees and also does not have any fund and thus, the payment of cash towards earned leave and enhanced gratuity is *dehors* law.

[14] The learned Single Judge failed to consider that as per the settled proposition of law, the Court should refrain from interfering with the policy decision, which might have a cascading effect and having financial implications. Whether to grant certain benefits to the employees or not should be left to the expert body and undertakings and the Court cannot interfere lightly. Granting of certain benefits may result in a cascading effect having financial consequences. It is a settled legal proposition that Article-14 of the Constitution is not meant to perpetuate illegality or impermissible acts, even by extending the wrong decisions made in other cases. Constitution does not envisage negative equality but has only a positive aspect.

[15] Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality

or for passing similarly wrong order. A wrong decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article-14 cannot be stretched too far for otherwise it would make functioning of administration impossible.

[16] Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the respondent has submitted that the direction from this Court upon the respondents, the appellant herein, to cause full and final payment of gratuity to the petitioner, the respondents herein, after adjusting the payment already made, and leave encashment benefit. On 29.02.1988, the petitioner was appointed as Accountant on contract basis under the respondents. Thereafter the service of the petitioner was regularized in the post of Lower Division Clerk by memo, dated 11.07.1988. The petitioner retired from service in the post of Accountant on attaining the age of superannuation w.e.f. 31.07.2020. The total period of service of the petitioner is 32 years. Rs.. 65,490/- was the last basic pay of the petitioner. As such the petitioner is entitled to Rs. 12, 09,046/- as full and final payment of gratuity. Nothing has been paid to the petitioner. The petitioner is also entitled to cash payment of 300 days. But till date the petitioner has not been paid leave encashment.

[17] In WA. No.112 of 2024 the appellant on 01.08.1988 was appointed as casual worker under the respondents. Thereafter, the service of the appellant was regularized in the post of Orchard Worker on 08.01.2013. The appellant retired from service in the same post on attaining the age of superannuation w.e.f. 31.05.2019. The total period of service of the appellant was 19 years including the 50% of service rendered by the appellant as Casual Worker. Rs.16,300/- was the last basic pay of the appellant. As such the appellant is entitled to Rs.1,78,673/-. But, nothing has been paid to the appellant. The appellant is also entitled to cash payment of salary 300 days. But, till date the appellant has not been paid leave encashment.

[18] In view of above discussion we are of the opinion that the present writ appeals are filed aggrieved by the order passed in the writ petitions and the subsequent review petitions. It is seen from the records and the arguments of both sides in review a categorical observation is made by the

review Court that a decision needs to be taken by the respondents' authorities in view of the facts and the legal positions. Though, it is stated before this Court by the learned Addl. G.A. that the petitioners, the respondents herein are not entitled to any reliefs since they are appointed as ad hoc employee and not permanent employees.

[19] Mr. P. R. Barman, learned senior counsel appearing for the respondents raised the objection that this argument was not advanced before the writ Court though in the counter affidavit filed by the respondent No.3 has indicated that the petitioners, the respondents herein were not entitled for any relief as sought for.

[20] For the purpose of reference the observations as made in the writ petition as well as in the review petition may be reproduced hereunder:

“It would be relevant to note therein that Smt. Niyati Saha was also an employee of the Tripura Horticulture Corporation Limited and this Court disposed of the said writ petition with the following directions:

7. Having regard to the submission of the learned counsel as well as government notifications, mentioned here-in-above, at this stage, I am not inclined to issue any specific direction upon the respondents. However, it is directed that the respondents, specially, the Finance Department, respondent no. 4, Government of Tripura, shall release all the benefits including gratuity and other pensionary benefits, which the petitioner is entitled to in view of the memorandum dated 16.08.1978 and 28.11.2012 within a period of two months from the date of receipt of this order. It is also to be noted that if the gratuity is not released within a period of thirty days from the date, the statute speaks that the employee concerned is to be paid interest. In the backdrop of the discussions and observations made here-in-above, and in the light of government circulars issued time to time, the concerned authority is to take decision within the period as fixed here-in-above. It is also made clear that while deciding the claim of the petitioner, the respondents, specially respondent no.4, Finance Department, Government of Tripura is under obligation to take note of the decision rendered by this court on 08.08.2017 in WP(C) 588 of 2017 (Mrs. Hena Rani Das vs. The State of Tripura and ors) as well as the decision arrived by this court in WP(C) 0000373 of 2015 (Gouranga Chandra Adhikari vs. The State of Tripura and ors).

8. Let the order of this writ petition along with the orders of this court passed in WP(C) 588 of 2017 and WP(C) 0000373 of 2015 be communicated to Mr. D. Sarma, learned Additional GA, who after receipt of the judgment of this writ petition will send the copy to the concerned department for taking necessary steps, as observed and directed above.

9. With the above observation and direction, the instant writ petition is disposed of. Liberty is reserved with the petitioner to approach this court, if she is aggrieved by any order of the respondents.

Accordingly, since the case is *pari materia* with the earlier judgment rendered by this Court, the writ petition is allowed in terms of the directions contained in paragraphs-7, 8 & 9 noted hereinabove."

The decision of the learned Single Judge in the Review Petition:

The decision of the learned single Judge is that-

"[6] I have considered the submissions of learned counsel for the parties, taken note of the pleadings placed from record and also gone through the writ records. I have also perused the impugned judgment. At the outset, it needs to be observed that review jurisdiction is exercised to correct the mistake of the Court and not the mistake of the parties. The instant stand taken by the petitioner-State that the writ petitioner was not a regular employee rather an ad hoc employee was never taken before the Writ Court. The respondent No. 3 (Managing Director, Tripura Horticulture Corporation Ltd.) in the writ petition has on the other hand taken a plea of resource crunch in meeting the expenditure towards post retirement benefits of the employees of the Corporation.

Moreover, the learned Writ Court has only directed the respondent-authorities to take an appropriate decision in the light of the Government circulars and the discussions and observations made therein within a stipulated period. As such, this Court does not find any grounds of review made out to interfere in the impugned judgment. It further appears that the impugned judgment was passed on the basis of earlier directions passed by the Writ Court in WP(C) No. 588 of 2017 dated 8th August 2017 and also in WP(C) No.224 of 2018 in case of Smt. Niyati Saha (supra) decided on 18th March, 2019 which decisions have attained finality. As such, no case of review is made out.

[7] The instant petition is dismissed. Pending application(s), if any, also stands disposed of."

[21] For the purpose of reference the observations as made in the writ petition as well as in the review petition may be reproduced hereunder:

"5. This Court does not think it necessary to keep the present cases pending since two binding precedents already exists in the matter and the petitioners herein were also employees of the same organization i.e. the Tripura Horticulture Corporation Limited which was the employer in the cases of Gouranga Ch. Adhikari (supra) as well as Mrs. Hena Rani Das (supra). Accordingly, this Court thinks it appropriate to dispose of the present writ petitions in terms of directions made in case of Mrs. Hena Rani Das (supra).

6. Consequently, the writ petitions are allowed. The respondents are directed to release the full amount of gratuity and the leave encashment to the petitioners within a period of 3(three) months from today with interest @ 7% per annum after one month from the date of their superannuation.

It is made clear that at the time of payment of gratuity if any sum has already been paid that amount shall be deducted from the entire gratuity entitled to the petitioners. However, this Court also makes it clear that the petitioners herein shall also abide by the outcome of the review applications said to have been filed by the State in the aforesaid two cases. This Court further makes it clear that if the petitioners so inclined, they may also intervene in the said review applications.

7. With the above observations and directions, the writ petitions are disposed of."

The decision of the learned Single Judge in the Review Petition:

The decision of the learned single Judge is that-

"This Court vide order dated 19.07.2023 disposed of the review petitions with an observation that the Writ Court had not made any observations on the merits of the case of the parties or the decision required to be taken by the review petitioners in compliance of the order of the learned Writ Court. Thereafter, contempt petitions were being pursued by the writ petitioners. During pendency of the contempt petitions, the State and the Corporation went in appeal before the learned Division Bench of this Court in WA No.86 of 2024, WA No.87 of 2024, WA No.88 of 2024 and WA 01 of 2024 (State of Tripura & Ors Vs. Bikash Roy). Learned Division Bench of this Court has passed an order of stay on 09.01.2024 in WA 01 of 2024.

In this background, learned Advocate General fairly submits that the review petitions may be allowed to be withdrawn since the fate of the impugned order depends upon the outcome of the writ appeals pending before the learned Division Bench of this Court.

In that view of the matter, these review petitions are disposed of as withdrawn."

[22] Since, the matter in terms of the order in the writ and the review petition in the order in writ has been verbatim in the review petition and in the review petition it is categorically stated that a decision needs to be taken by the concerned authority. This Court clarifies the respondents, the appellants herein, to take a decision within one month from today considering the legal and factual position and communicate the same to the respondents.

[23] At the outset, it needs to be observed that review jurisdiction is exercised to correct the mistake of the Court and not the mistake of the parties. The instant stand taken by the petitioner-State, the appellants herein, that the writ petitioners, the respondents were not regular employees rather an ad hoc employee was never taken before the Writ Court. The respondent No. 3 in the writ petition has on the other hand taken a plea of resource crunch in meeting

the expenditure towards post retirement benefits of the employees of the Corporation. Moreover, the learned writ Court has only directed the respondent-authorities to take an appropriate decision in the light of the Government circulars and the discussions and observations made therein within a stipulated period. Thus, no interference is required in the order.

[24] With the above observations, the present appeals stand dismissed. As a sequel, miscellaneous application, if any, shall stand closed.

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

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