

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.63 of 2022

- 1. The Managing Director,**
Tripura OBC Co-Op. Development Corporation Ltd., Lake Chowmuhani,
Agartala, District West Tripura, Pin 799001.
- 2. The General Manager,**
Tripura OBC Co-Op. Development Corporation Ltd., Lake Chowmuhani,
Agartala, District West Tripura, Pin 799001.

..... Appellant(s)

V E R S U S

- 1. Sri Gopal Debnath,**
Son of Late Radha Kanta Debnath, Residing at East Badharghat, P.O.
Madhuban, P.S. Amtali, District West Tripura, Pin 799130.
- 2. The State of Tripura,**
Represented by the Deputy Secretary, OBC Department, Govt. of Tripura,
New Secretariat Building, P.O. & P.S. N.C.C., Agartala, District West
Tripura, Pin 799010.
- 3. The Regional Provident Fund Commissioner, (EPFO),**
Airport Road, near Bholagiri Ashram, Agartala, West Tripura, Pin 799006.

..... Respondent(s)

For Appellant(s)	:	Mr. Dhruva Jyoti Saha, Advocate. Mr. I. Biswas, Advocate.
For Respondent(s)	:	Mr. Bidyut Majumder, Dy. S.G.I. Mr. Dipankar Sarma, Addl. G.A. Mr. Prasanta Kumar Pal, Advocate. Mr. Saugat Datta, Advocate. Ms. Maitri Majumder, Advocate.

Date of hearing &
delivery of Judgment : **1st July, 2025.**

Whether fit for reporting : NO

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

JUDGMENT & ORDER (ORAL)

Heard Mr. Dhruva Jyoti Saha, learned counsel for the appellant-
Corporation and Mr. Prasanta Kumar Pal, learned counsel representing the writ
petitioner/respondent no.1.

[2] The instant appeal stands revived pursuant to the order dated 22.01.2025 passed by the Hon'ble Supreme Court in Special Leave to Appeal (C) No(s).7344-7345/2024. The writ petitioner had gone before the Supreme Court against the judgment passed in WA No.63 of 2022 and the order passed in Review Pet. No.01 of 2024. The writ petition was filed with a prayer to direct the respondent nos.1 to 3 for release of gratuity under Payment of Gratuity Act, 1972 along with interest and leave encashment for unspent Earned Leave credited in his leave account together with simple interest and also for a direction to pay the pension under the EPF Pension Scheme, 1995 along with compound interest. The writ petition was disposed of vide order dated 12.05.2022 taking note of the stand of the Central Government Counsel that the provident fund organization had decided to release the amount of provident fund already deposited in favour of the petitioner, lying with the organization. Since the respondent Nos.2 and 3 had preferred an appeal against the order dated 03.03.2022 regarding the release of gratuity amount, the learned Writ Court, declined to decide the issue of gratuity as the matter was lying before the Division Bench. The writ appeal was disposed of by judgment 07.12.2023 on the basis of submission of learned counsel for the appellant-Corporation that they shall pay the gratuity, so far the petitioner had rendered his service under the appellant within a stipulated period. Review Pet. No.01 of 2024 was filed by the writ petitioner being aggrieved by the order dated 07.12.2023 passed in WA No.63 of 2022 wherein it was recorded that learned counsel for the respondent-petitioner had no objection to the above proposal made by learned counsel for the appellant-Corporation. However, the review petition was dismissed. Thereafter, the writ petitioner approached the Apex

Court in Special Leave to Appeal (C) No(s).7344-7345/2024. Leave was granted and the Civil Appeal No(s).946-947/2025 was disposed of. The order of the Apex Court dated 22.01.2025 is extracted hereunder:

“1. Leave granted.

2. These appeals arise from the judgment and order passed by the High Court of Tripura at Agarthala in Writ Appeal Nos. 63/2022 dated 07-12-2023 and in Review Petition No. 1/2024 dated 25-01-2024.

3. The writ petition filed by the appellant seeking retiral benefits was allowed by the learned Single Judge directing payment of gratuity on 03.03.2022. Questioning the decision of the learned Single Judge, respondent Nos. 2 and 3 filed Writ Appeals before the Division Bench of the High Court. The Division Bench disposed of the Writ Appeal by recording what it perceived to be a consent order which is as follows:-

“Today when the matter has come up, Mr. Saha, learned counsel for the appellant/respondent has submitted that they shall pay the gratuity, so far as the period the petitioner/respondents has rendered his service under the appellant.

Mr. Pal, learned counsel for the respondent-petitioner has no objection to the above proposal made by Mr. Saha, learned counsel for the appellant.

Since the matter has already been resolved and the appellant has agreed to pay gratuity amount for the period as observed above, we direct the appellant i.e. the Managing Director of Tripura OBC Co-Op. Development Corporation Ltd. to pay gratuity to the respondent no. 1 herein along with interest as indicated by learned Single Judge in his order dated 03.03.2022 within a period of 3(three) weeks from today.

With the aforesaid order, the instant appeal stands disposed.”

4. The appellant filed a Review Petition seeking recall of the order, but the same was dismissed by the Division Bench on 25.01.2024 by a short order, which is as under:-

“Heard Mr. P.K. Pal, learned counsel along with Mr. S. Datta, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Dy. SGI appearing for the respondent no. 4 and Ms. K. Reang, learned counsel appearing for the respondents-State.

Mr. Datta, learned counsel for the petitioner has submitted that in the order dated 07.12.2023 passed by this Court in connection with case no. WA 63 of 2022 titled as The Managing Director Vs. Sr. Gopal Debnath and 2 Ors., the submission of Mr. Pal, learned counsel has wrongly been recorded which is as under:-

“Mr. Pal, learned counsel for the respondent-petitioner has no objection to the above proposal made by Mr. Saha, learned counsel for the appellant.”

It is submitted in presence of Mr. Pal, learned counsel that Mr. Pal, learned counsel had raised objection and the observation of this court in the order dated 07.12.2023 was wrong.

We have considered the matter.

It is seen from the order dated 07.12.2023 that the said order was passed and the submission was recorded in front of Mr. Pal, learned counsel in the open court. So, we are not inclined to entertain this submission and it is not a matter of review.

Accordingly, the instant review petition stands dismissed.”

5. Heard Mr. Rituraj Biswas, learned counsel appearing on behalf of the appellant and Mr. Shuvodeep Roy, learned counsel appearing on behalf of the respondent(s).

6. It is submitted by the learned counsel for the appellant that the High Court did not examine the matter on the merits for the reason that it has recorded the submission of the learned counsel for the appellant that he has no objection for calculating the period for gratuity and other claims in respect of services rendered by the appellant from 22.12.2012 to 31.03.2021, his date of superannuation.

7. Learned counsel for the appellant further submits that claim made by him is statutory in nature and his advocate could not have submitted that he will relinquish the other claims. We agree. Irrespective of the submission of the learned counsel for the appellant in the High Court, we are of the opinion that the appellant should be heard on the merits of the matter.

8. In view of the above, we allow the appeals, set aside the orders passed by the High Court in W.A. No. 63 of 2022 dated 07.12.2023 and in Review Petition No. 1 of 2024 dated 25.01.2024, and restore the W.A. No. 63 of 2022 to its original number.

9. We request the High Court to take up the writ appeal and dispose it of after giving an opportunity to all the contesting parties as expeditiously as possible, preferably within a period of six months from the date of our order.”

The present appeal has thereafter been taken up and is being disposed of today.

[3] Earlier during the proceedings of the present appeal after remand by the Hon’ble Supreme Court, this Court upon hearing learned counsel for the parties vide order dated 20.05.2025 directed the Corporation to produce the entire service record of the petitioner along with the Rules governing the

service conditions of the employees in the Corporation as the pleadings of the writ petition were sketchy to give a correct picture of the background in which the petitioner was appointed in the Corporation in the year 2012. A competent officer of the Corporation was also asked to be present with the records on the next date to assist the Court. Thereafter, Mr. Rupak Bhattacharjee, General Manager of the appellant-Corporation appeared on 23.06.2025 with the service records of the writ petitioner. He stated on instruction that on scrutiny of the service records of the writ petitioner he is entitled to get the benefit of past service for the purpose of gratuity. However, the appellant-Corporation disputed the entitlement of leave encashment of the writ petitioner. He stated that an affidavit would be filed to that effect. The affidavit has been filed thereafter on 27.06.2025. The officer is also present today.

[4] Mr. Dhruva Jyoti Saha, learned counsel for the appellant-Corporation has taken this Court to the averments made in the instant affidavit. The chronology of the service career of the petitioner has been enumerated at Paragraph 1 to 5 of the instant affidavit. It indicates that the petitioner was initially appointed in the Tripura Jute Mills Limited on 26.03.1981 as a Trainee Worker in the Weaving Department. He was designated as a Loom Operator w.e.f. 25.03.1982. Thereafter, he was appointed on ad-hoc basis as a Clerk w.e.f. 21.02.1990 and later as Clerk (Grade-I) w.e.f. 15.09.1990. The said post was redesignated as Lower Division Clerk (LDC). The writ petitioner did not receive any further promotion or benefit under the Assured Career Progression (ACP) Scheme up to August, 2000. Thereafter, he was temporarily placed on deputation in the Tripura OBC Cooperative Development Corporation Limited i.e. the appellant-organization as LDC-cum-Cashier in the pay scale of

Rs.3300-100-7100/- pursuant to the order dated 08.08.2000. The order stipulated that expenditure towards the pay and allowances of the incumbent would be borne by the appellant-Corporation (Annexure-2). Thereafter, petitioner continued under the Corporation on deputation till he was selected to the post of U.D.C. w.e.f. 14.12.2012 as per appointment letter dated 21.12.2012 after facing a walk-in-interview. The appointment was subject to the condition laid down in the memorandum dated 14.12.2012 (Annexure-4). The affidavit further states that the management vide memorandum dated 15.03.2013 agreed to give the benefit of past service as applicable under Rules and pay protection at par with the pay drawn by him for the month of November, 2012 (Annexure-5). The Board of Directors of the Corporation in its 83rd meeting held on 04.01.2016 resolved to make such provision of fund on profit for the post service benefit of its employees like pension, leave salary etc. The resolution is at Annexure-6. It is thereafter submitted that the Corporation decided to allocate a portion of its profits for employee post-service benefits, such as pension, gratuity and leave salary. However, since the Corporation has incurred losses since its inception and had never generated profit, no such fund could be allocated for leave salary. Later in its 100th Board of Directors meeting, it was resolved that there exists no specific policy or guideline regarding the provision of retirement benefits including leave salary and gratuity under the Corporation (Annexure-7). However, at Para 9, it is stated that the writ petitioner is entitled to gratuity for the period of service rendered under the Corporation which has already been disbursed in terms of the Payment of Gratuity Act. Additionally, his past service benefits have been recognized as per of Memorandum dated 15.03.2013 (Annexure-5). Therefore,

he is also entitled to gratuity in respect of his past service. However, he is not entitled to leave salary, as no specific fund was allocated for such payment by the Corporation and the Board of Directors expressly resolved in its 100th meeting that no such benefit could be extended in absence of any enabling policy. Thereafter, from Para 10 to 12 of the affidavit, statements have been made that son of the petitioner namely, Sri Debajyoti Debnath had applied and obtained education loan of Rs.4,00,000/- wherein the writ petitioner stood as a guarantor. However, the writ petitioner defaulted in discharging his liability after the principal borrower i.e. his son failed to repay the amount. The total outstanding amount as on 23.06.2025 is Rs.5,46,758/- which is liable to be recovered from the writ petitioner. Since, he is retired, the said amount is required to be realized from the retirement benefits for which multiple notices have been issued on 06.08.2021, 26.09.2024 and 24.06.2025 (Annexure-9). It is submitted that the recovery of the loan amount outstanding is to be effected from the retirement benefits payable to the writ petitioner in accordance with law.

[5] Learned counsel for the appellant-Corporation submits that while on the one hand the Corporation has not only granted the benefits of past service to the writ petitioner but also undertaken to pay gratuity due, for his past services under the Tripura Jute Mills Limited. Gratuity payable for the period of service under the Corporation has already been disbursed to him. However, since the provision for creation of fund on profit for payment of retirement benefits like gratuity, leave encashment etc. could not be implemented for the reason that the Corporation has not been able to generate

profit, the claim of leave encashment by the writ petitioner cannot be allowed. Therefore, the appeal may be disposed of on those lines.

[6] Learned counsel for the writ petitioner submits that now since the Corporation has acknowledged to grant the benefits of past service in favour of the writ petitioner and payment of gratuity in lieu of that, the claim of the writ petitioner for the benefit of gratuity for his past service is no longer a matter of dispute. The Corporation may be directed to disburse the arrears of gratuity for his past service within a prescribed period. However, he submits that the Corporation had also undertaken to create fund for payment of leave salary to its employees which the Corporation cannot resile from. Learned counsel for the writ petitioner submits that there are no other employees who have retired prior to the writ petitioner. Learned counsel for the writ petitioner also submits that the amount of gratuity cannot be subjected to recovery for an outstanding loan amount in view of Section 13 of Payment of Gratuity Act, 1972.

[7] Be that as it may, since the Corporation has accepted to grant the benefits of past service so far as the claim of gratuity is concerned in favour of the writ petitioner, the said claim does not survive any more. It appears from the statement made by the Corporation on affidavit that the writ petitioner is liable for repayment of certain educational loan granted in favour of his son in which he stood as guarantor. However, we refrain from making any comments on that issue in the present matter. It is for the writ petitioner to respond to the notice of such recovery to the appellant-Corporation which may be considered in accordance with law. So far as the claim of leave encashment is concerned, since the Corporation has not been able to generate funds, as per the minutes of

the 83rd meeting of the Board of Directors, such a direction ought not to be issued by this Court. In the case of in ***Tamil Nadu Electricity Board Vs. TNEB-Thozhilalar Aykkiya Sangam*** reported in ***(2019) 15 SCC 235*** the Apex Court at paragraph 23 observed that while considering the grievance of wage structure or dearness allowance, the importance of considering the financial implications while providing benefits to employees has been noted by the Supreme Court in number of judgments. Since the Corporation has not been able to generate profit and is running in losses, the employer cannot be compelled to bear financial liability of payment of leave salary at present. In this context, reference may be made to the decision of the Apex Court in ***State of Sikkim & Ors., Vs. Dr. Mool Raj Kotwal***, reported in ***2025 SCC OnLine SC 888 (paragraph 26 - 29)***. However, in case, in future the Corporation is able to generate profit and create such a fund, such a claim for leave encashment of the writ petitioner should also be considered at par with other such similarly situated employees.

[8] In view of the facts and circumstances recorded hereinabove, the writ appeal is disposed of with a direction to the appellant-Corporation to pay the balance gratuity amount due for the past service rendered by the writ petitioner, subject to recovery of any outstanding loan, in accordance with law.

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

(S. DATTA PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ