

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.61/2024

Shri Bhanu Lodh, Son of Sachiram Lodh, Resident of Type-III/B/09, PWD Quarter Complex, Gandhighat, P.S.-West Agartala, District-West Tripura, Pin-799001.

..... Appellant(s).

V E R S U S

1. Tripura Jute Mills Limited, Represented by the Chairman-cum-Managing Director, Office at Hapania, P.O. at O.N.G.C., P.S.-Amtali, District-West Tripura-799014.

2. The Chairman-cum-Managing Director, Tripura Jute Mills Limited, Hapania, P.O. at O.N.G.C., P.S.-Amtali, District-West Tripura-799014.

.....Respondent(s).

For Appellant(s) : Mr. Tapas Datta Majumder, Sr. Advocate,
Mr. Tapas Halam, Advocate.

For Respondent(s) : Mr. Pradyumna Gautam, Sr. G.A.

**HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA**

Date of hearing & judgment : **19.11.2025.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

(M.S. Ramachandra Rao, C.J.)

Heard Mr. Tapas Datta Majumder, learned senior counsel assisted by Mr. Tapas Halam, counsel for the appellant and Mr. Pradyumna Gautam, senior Government Advocate appearing for the respondents.

2. This Writ Appeal is preferred by the appellant challenging the judgment dt. 15.12.2023 in Review Petition No.19 of 2023 in WP(C) No.693 of 2020 passed by the learned Single Judge.

3. The appellant had filed the WP(C) No.693 of 2020, *inter alia*, seeking payment of unpaid balance amount of gratuity and had placed reliance

on Rule 9.5 of the Tripura Jute Mills Limited Standing Rules, Regulations and Conditions of Service of the Managerial Staff and Assistants/Officers/Supervisors (for short, the Rules).

4. In the said Rule, it was provided that each staff on completion of minimum five years of service would be entitled to gratuity on resignation, retirement, termination or dismissal. The gratuity shall be calculated and paid at the rate of 15 days last drawn salary (exclusive of HRA and CA, if he was paid any) for each completed year of service for a maximum period of 40 years of completed service irrespective of gratuity amount limit. For the purpose of calculating the period of completed, any period of service below six months shall not be taken into account but any such period exceeding six months shall be taken as a completed year of service.

5. The respondent-Tripura Jute Mills Limited filed a counter affidavit in the said Writ Petition stating that the appellant would come within the purview of the provisions of Payment of Gratuity Act, 1972 and that payment of gratuity of the employees of the respondents would be governed by the said Act with its amendment from time to time.

It was contended in the counter affidavit filed in the said Writ Petition by the respondents that at the time of retirement of the appellant, the Payment of Gratuity (Amendment) Act, 2010 [Gazette Notification No.20, dt.18.05.2010] under the Payment of Gratuity Act, 1972 was enforced in the respondent-organization where maximum ceiling limit was Rs.10,00,000/- (rupees ten lakhs); and accordingly, the appellant was paid Rs.10 lakhs as per his entitlement at the time of his retirement on 31.12.2018.

It was also stated that there was another amendment to the Payment of Gratuity Act, 1972 in the year 2018 vide Payment of Gratuity

(Amendment) Act, 2018 which came into force on 29.03.2018 adding provision of ceiling amount of Rs.20 lakhs and the appellant was entitled to get the benefit of the said Act and the balance of Rs.10 lakhs was also paid to him on 20.05.2022 through a cheque No.000989 dt.19.05.2022 drawn on UCO Bank, Agartala Branch. It was denied that the appellant was entitled to anything more.

6. The learned Single Judge, in the impugned judgment, considered the respective contentions of the parties and held that as per sub-section (5) of Section 4 of Payment of Gratuity Act, 1972, an employee would be entitled to receive better terms of gratuity under any award or agreement or contract with the employer; and since Rule 9.5 of the Rules cited by the appellant entitled him to get Rs.24,95,942/-, which is more beneficial to the appellant, the respondents cannot only pay Rs.20 lakhs and that they should also pay to the appellant the balance of Rs.4,95,942/- along with interest @ 4% per annum.

7. After this judgment was delivered by the learned Single Judge on 15.11.2022, the respondents filed a Review Petition contending that there was a misrepresentation on the part of the appellant, that he had manipulated the Annexure-4 to the Writ Petition which contained the Rule and secured relief in the Writ Petition, that the actual document dealing with the payment of Gratuity and other service benefits of employees was not the document filed as the 'Rules' by the appellant, but another document titled "The Tripura Jute Mills Limited Standing Rules, Regulations and Conditions of Service of the Managerial Staff and Assistants" and that the last two words "Officers/Supervisors" were absent. According to the respondents, these Rules have been approved in the 69th meeting of the Board of Directors held on

27.11.1982 and came into effect from 01.01.1983 vide a memorandum dt.05.02.1983 which was further amended on 22.07.1985.

8. It was contended on behalf of the respondents that Rule 9.5 of these Rules stated that the gratuity shall be calculated and paid at the rate of 15 days last drawn salary (exclusive of HRA and CA, if he was paid any) for each completed year of service for a maximum period of 20 years or completed service. But the appellant, in the Rules framed by him, had altered the period of 20 years to 40 years of completed service.

9. Though this plea was not raised in the counter affidavit filed by the respondents in the Writ Petition and not argued when the said Writ Petition was heard by the single Judge, and it was also not proved that there was sufficient due diligence exercised by the respondents before the Writ Petition was decided, the learned Single Judge accepted the plea of the respondents, recalled on 15.12.2023 by the impugned judgment, his order dt.15.11.2022 in WP(C) No.693 of 2020 by allowing the Review Petition and imposed heavy costs of Rs.1 lakh on the appellant as exemplary costs.

10. This is challenged by the appellant in the Writ Petition.

11. Counsel for the appellant contended that the so called Rules cited in the Review Application by the respondents as a basis for seeking the review, which mentioned the period for calculation of gratuity as only 20 years of completed service instead of 40 years (which period was contained in the Rules cited by the appellant in the Writ Petition) is itself a manipulation by the respondents because in another Writ Petition being WP(C) No.844 of 2020 titled *Tripura Jute Mills Officers Association vrs. State of Tripura and The Tripura Jute Mills Limited* (respondent herein), the respondents had relied upon the Rules filed by the petitioner in the WP(C) No.693 of 2020 as

Annexure-2; and in paragraph-6 of that Writ Petition, they have relied on the same Rules.

He further contended that it was not open to the respondents in the Review Application to cite a modified Rule 9.5 when that was not their plea in WP(C) No.844 of 2020 where the period of completed service for Payment of Gratuity is shown to be 40 years only as was claimed by the appellant in the Writ Petition.

It is his further contention that a new point which was not argued during the pendency of the Writ Petition, before its decision, cannot be raised in a Review Petition.

He also contended that after the Writ Petition was allowed by the learned Single Judge on 15.11.2022, the respondents allegedly constituted an Inquiry Committee consisting of the Additional Director, Industries and Commerce Department, Government of Tripura as Chairman with the Accounts Officer, Commercial Officer and Junior Supervisor of the respondents; and on the basis of this Committee's inquiry report, the Review Petition has been filed; there was no due diligence shown by the respondents when the Writ Petition was pending to discover the Rule which is now quoted in the Review Petition; and so the Review Petition could not have been entertained by the learned Single Judge.

12. Counsel for the respondents, however, refuted the submissions of the counsel for the appellant and contended that the appellant had played fraud on the Court and secured an order in the Writ Petition from the learned Single Judge in his favour by manipulating the contents of Rule 9.5; and the respondents were entitled to therefore constitute a committee to identify the correct Rule, and then file a Review Petition thereafter.

13. We have noted the contentions of both sides.

14. A specific question was put to the counsel for the respondents as to why the respondents had relied on the same Rules filed by them as Annexure-2 in WP(C) No.844 of 2020 showing Clause 9.5 with contents identical with the Rule 9.5 cited by the petitioner in this case which mentioned the maximum period of 40 years of completed service and not 20 years; and why in WP(C) No.844 of 2020 one stand was taken by the respondents, and in the Review Petition No.19 of 2023 arising in WP(C) No.693 of 2020 a totally different stand is taken by the respondents.

15. There is no satisfactory answer given by the counsel for the respondents to this.

16. If really the stand taken by the respondents in the Review Petition No.19 of 2023 was correct, the respondents would not have filed in WP(C) No.844 of 2020, the Rule 9.5, which the appellant filed in the Writ Petition and relied on, and they would have filed along with their counter affidavit, the Rule mentioning a lesser period of completed service of 20 years instead of 40 years mentioned in the Rule relied upon by the appellant.

17. We find this conduct on the part of the respondents lacking in *bona fides* totally and fraudulent.

18. Also in the Counter affidavit filed by the respondents before the learned Single Judge in W.P.(C)No.693 of 2020 they had only pleaded about the payment of gratuity as per the Payment of Gratuity Act,1972 as amended from time to time and they had made no mention of the Rule 9.5 cited by them in the review Petition mentioning only 20 years of completed years of service instead of 40 years of service on which the petitioner relied on.

19. It is settled law that in a Review Petition, new grounds which were not raised in the original proceedings [WP(C) No.693 of 2020] by the applicant for review/ respondents could not have been raised. In ***Collector of 24 Parganas and others v. Lalith Mohan Mullick and others***¹, it was held as under:

"2. Learned counsel for the applicant has also raised the contention embodied in ground No. D reading as under:-

"This Honourable Court was allowed to be misled by documents alleged to be the petition of appeal presented before this Honourable Court and not bringing to the notice of this Honourable Court the facts that the Society of Experimental Science, India for whom the land in dispute was sought to be acquired was not in existence and in fact the land was not at all needed by the appellants herein for public purpose for constructing a hospital for the crippled children as claimed by the appellants herein;"

So far as this ground is concerned, it was not raised before this Court when the appeal was heard on merits. It does not appear to have been raised even before the High Court. The new ground cannot be taken into consideration for the purposes of the review application, apart from the fact that it would also involve investigation of new facts which were not on record till the point of time when the appeal was disposed of by this Court on February 13, 1986. We see no reason to entertain this review petition which accordingly fails and is dismissed."

(emphasis supplied)

20. Similar view was also taken by the Supreme Court in ***Nehali Panjiyara and others v. Shyama Devi and others***². It was held as under:

¹ AIR 1988 SC 2121

² (2002) 10 SCC 578

"2. The review petition raises entirely a new point about the extinction of the legal heirs in the line of descendants of the estate represented by Gurudayal Panjiara and Kunjlal Panjiara prior to the institution of the suit and that the said estate stood inherited in amongst the descendants of only Matuki Panjiara and Ashrafi Panjiara. Such a contention was never canvassed before any of the courts below. Not only that, there was no issue sought for on this point even before the trial court. In second appeal the only dispute raised was regarding suit properties Items 2 to 8. The High Court confirmed the decision about their partibility in the light of the findings reached by the lower appellate court which has noted in para 49 of its judgment that defendant 2nd party admitted the plaintiff's claim for Items 2 to 8 of the schedule.

3. Consequently, no case is made out for our interference in the review proceedings on the aforesaid new contention.

4. The review petition is, therefore, dismissed on merits." (emphasis supplied)

21. More importantly, where review is sought on the ground of discovery of new and important matter of evidence by a party like the respondents, there are strict conditions imposed, i.e. the party seeking to rely on the said evidence must show that after the exercise of due diligence such important matter or evidence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made.

22. Therefore, the Judge before whom the Review Petition is filed wherein such a ground is raised, has to enquire and seek strict proof of the fact as to absence of negligence on the part of the party seeking the review. There has to be strong evidence of diligence in getting all the available evidence. The party seeking the review must show that after the exercise of due

diligence, the evidence was not within its knowledge or could not be produced by it at that time. Mere fact that the applicant for review could not produce the evidence in spite of his best efforts is no ground for allowing the review under this clause.

23. In the case of **Avinash Hansraj Gajbhiye v. Official Liquidator, M/s. V. Pharma (P) Ltd.**³, the Supreme Court held in paragraph-5 as under:

"5. While dismissing the petition for review of the order dated 7-9-2001, on 16-8-2002, the Company Judge found on the basis of the material on record of Company Application No. 40 of 1999 and the contentions sought to be raised by the appellant that there was no error apparent on the face of the record in the order dated 7-9-2001. Therefore, what was involved in Company Appeal No. 3 of 2002 was only the correctness of that order of the Company Judge and the Division Bench by its judgment dated 19-9-2002, found no reason to interfere. The review was sought by the appellant on the basis of certain additional material which according to him had relevance and the Company Judge had found that no ground based on discovery of new and important matter which after the exercise of due diligence was not within the knowledge of the appellant or could not be produced by him at the time when the original order was passed, was made out. This finding by the Company Judge was affirmed by the Division Bench in its order dated 19-9-2002. When the appellant sought a review of that order, as indicated earlier, the Division Bench considered the conduct of the appellant right through the proceedings and found that the appellant was indulging in dilatory tactics just to thwart the order passed by the Company Judge on the misfeasance application. The Court also found that there was no ground made out for reviewing its order dated 19-9-2002. On a consideration of the relevant aspects, we find that the

³ AIR 2006 SC 1317

Division Bench and the learned Single Judge were both justified in not acceding to the prayer for review made by the appellant."

(emphasis supplied)

24. For all the aforesaid reasons, we are of the opinion that the learned Single Judge erred in allowing the Review Petition No.19 of 2023 because no due diligence has been shown by the respondents in bringing to the notice of the learned Single Judge the new Rule which it had relied on in the Review Petition before he decided the W.P.(C) No.693 of 2020 ; and more particularly, because in WP(C) No.844 of 2020 it relied on the very Rules which the appellant had quoted before the learned Single Judge in the Writ Petition and succeeded in the Writ Petition.

25. Therefore, the Writ Appeal is allowed; order dt.15.12.2023 in Review Petition No.19 of 2023 is set aside and order dt.15.11.2022 in WP(C) No.693 of 2020 is restored. The respondents shall pay costs of Rs.2,00,000/- (rupees two lakhs) to the appellant within 4(four) weeks as exemplary costs for misleading the Court and securing a favorable order in the Review Petition to themselves.

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

(S. DATTA PURKAYASTHA, J) (M.S. RAMACHANDRA RAO, CJ)

Pulak

PULAK BANIK

Digitally signed by PULAK BANIK
Date: 2025.11.20 16:20:39 +05'30'