

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.687 of 2024**

Purabi Roy (Saha)
W/O: Late Nepal Kanti Roy,
R/O: Vill: Pabiachara, Kailashahar, North Tripura.

----- Petitioners

Versus

- 1. The State of Tripura,**
To be represented by its Secretary, Department of Finance,
Government of Tripura, New Secretariat Building,
New Capital Complex, Agartala, West Tripura, Pin-799010.
- 2. The Secretary,**
Department of Urban Development Department,
Government of Tripura, New Secretariat Building,
New Capital Complex, Agartala, West Tripura, Pin- 799010.
- 3. Kumarghat Municipal Council,**
To be represented by the Chief Executive Officer, Kumarghat
Municipal Council, Kumarghat, Unokoti, Tripura.

----- Respondents

For Petitioner(s)	:	Ms. A. Debbarma, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G. A.
Date of hearing and delivery of Judgment & Order	:	20.01.2025
Whether fit for reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order(Oral)

By means of filing this writ petition, the petitioner has prayed for the following reliefs:

- i) **Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to make the full and final payment of Gratuity with interest @ 9% per annum to the Petitioner w.e.f. the date on which gratuity became payable till date of payment after adjusting lump sum amount of Rs 8,47,900/- already paid.**

ii) Issue Rule upon the Respondents to show cause as to why writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to pay the Petitioner interest @ 9% per annum on Rs 1,80,827/-, w.e.f., 01.02.2019 to 23.10.2019.

iii) Issue Rule upon the Respondents to show cause as to why writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to pay interest @ 9% per annum to the Petitioner Rs.1,24,592/- w.e.f. 01.02.2019 to 08.01.2020.

iv) Make the rules absolute.

v) Call for records.

vi) Pass any further order/orders as this Hon'ble High Court considers fit and proper.

AND

For this act of kindness, your humble Petitioners as in duty bound shall ever pray.

2. Heard Learned Counsel Ms. A. Debbarma representing the petitioner and also heard Learned Addl. G.A., Mr. M. Debbarma appearing on behalf of the State-respondents.

3. Taking part in the hearing, Learned Counsel for the petitioner first of all drawn the attention of this Court that the husband of the petitioner namely Nepal Kanti Roy was an employee under Kumarghat Municipal Council and discharged his functions as Town Supervisor and on attaining the age of superannuation, he retired from service on 31.12.2018 from the same post (Annexure-2).

4. The Chief Executive Officer, Kumarghat Municipal Council in this regard issued one release order from which it appears that he was released from that office on 31.12.2018 (Annexure-3).

5. After that, the Deputy Chief Executive Officer, Kumarghat Municipal Council under Unokoti District issued Pension Payment Order of said Nepal Kanti Roy on 22.09.2020 (Annexure-4).

6. In the mean time, the Director, Directorate of Urban Development approached the Chief Executive Officer, Kumarghat Municipal Council by a communication dated 09.09.2019 requesting him to make payment of Rs.1,80,827/- towards payment of gratuity out of total amount of Rs.7,23,308/- to said Nepal Kanti Roy, Retired Town Supervisor (Annexure-5) and accordingly, the Chief Executive Officer, Kumarghat Municipal Council issued two sanction memos on 30.01.2019 and 23.10.2019 by which an amount of Rs.5,42,481/- being the provisional gratuity and further amount of Rs.1,80,827/- being the balance 25% of gratuity amount were sanctioned in favour of Nepal Kanti Roy (Annexure-6 and 7). Further, according to Learned Counsel, said Nepal Kanti Roy expired on 06.12.2023 and the Deputy Chief Executive Officer issued one death certificate on 13.12.2023 in this regard (Annexure-8).

7. Thereafter, the SDM, Kumarghat, Unakoti issued survival certificate on 03.02.2024 (Annexure-9) showing the present petitioner Smt. Purabi Roy Saha, his wife, Mr. Nabarun Roy, his son and Mrs. Anamika Roy, his daughter as his legal heirs.

8. Thereafter, the petitioner issued legal notice through her concerned Learned Advocate on 17.05.2024 (Annexure-10) to the respondents for releasing the remaining amount of Gratuity with 9% interest for deferred payment of Gratuity. But as there was some typographical error in the legal notice so the petitioner further served legal notice upon the respondents by another communication dated

02.09.2024 (Annexure-11) and accordingly, the Joint Director, Urban Development Department made reply to the said legal notice on 09.09.2024 (Annexure-12) and the Deputy CEO, Kumarghat Municipal Council also made reply to the legal notice on 21.06.2024 (Annexure-13). But as the issue of the present petitioner was not addressed by the respondents properly so the present petitioner has filed this writ petition seeking the reliefs as mentioned above.

9. Learned Counsel at the time of hearing further drawn the attention of this Court that in para No.10 of the writ petition, it was stated by the petitioner that vide Notification dated 06.10.2018, the basic pay of Nepal Kanti Roy(since dead) was enhanced to Rs.55,600/- from Rs.47,430/- as per the TSCS(Revised Pay) (First Amendment) Rules, 2018 and, as such, considering the length of qualifying service of the husband of the petitioner, said Nepal Kanti Roy was entitled to Rs.9,62,307/- as gratuity but according to Learned Counsel, the respondents have wrongly calculated the amount and in the counter affidavit in para No.5, according to them, a sum of Rs.8,47,900/- was shown which was not proper as per the relevant provisions of the payment of Gratuity Act. So, Learned Counsel finally urged for allowing relief to the petitioner.

10. On the other hand, Learned Addl. G.A. appearing on behalf of the respondents opposed the submission made by Learned Counsel for the petitioner and submitted that in para No.5 of the counter affidavit, the respondents have mentioned the total entitlement of the deceased husband of the petitioner and the State-respondents by this time has already released Rs.8,47,900/- and, as such, the petitioner is not entitled to any further amount.

For the sake of convenience, the relevant portion of para No.5 of the counter affidavit is mentioned herein below:

"Thereafter, TSCS (Revised Pay) (First Amendments) Rules-2018 has come into force and after adoption by the Administrative Authority as being autonomous body, on revised calculation of gratuity increased to Rs.8,47,900/- and accordingly, balance revised amount of Rs. (8,47,900 - 7,23,308/-) =1,24,592/- has been released subsequently. So, 75% and 25% of gratuity amount has been sanctioned and released within the prescribed period and the last revised gratuity has been sanctioned after adoption of the TSCS (Revised Pay) (First Amendments) Rules-2018 and therefore, no delay has been occurred on the part of the respondent state."

11. I have heard detailed argument of both the sides and also gone through the relevant papers submitted by the parties in this writ petition. At the time of hearing, Learned Addl. G.A. also drawn the attention of this Court the communication dated 21.06.2024 written by Deputy Chief Executive Officer, Kumarghat Municipal Council to Miss A. Debbarma, the Learned Counsel appearing on behalf of the petitioner and submitted that the respondents have already paid the said sum of Rs.8,47,900/- and after releasing of the said amount, no further amount is due to said deceased husband of the petitioner and, as such, the present petition is not maintainable.

12. Now, after hearing both the sides, it appears that the gratuity amount as aforesaid has not been paid to the husband of the petitioner in terms of the relevant provisions of the payment of the gratuity Act, 1972.

Section 7(3) of the payment of gratuity Act provides that:

7. Determination of the amount of gratuity.-

(3) The employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is payable.

From the above provision, it is clear that the employer shall arrange to pay the amount of gratuity within one month from the date of superannuation on retirement of said Nepal Kanti Roy. Here in this case, said Nepal Kanti Roy proceeded on retirement on 31.12.2018 which is also duly been admitted by the State-respondents and there is no dispute on that.

13. Now, sub-section(2) of Section 4 along with explanation of the payment of gratuity Act provides as under:

4. Payment of gratuity.-

(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned:

Provided that in the case of a piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account:

Provided further that in the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Explanation.- In the case of a monthly rated employee, the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

From the aforesaid provision, it is clear that how the amount is to be calculated.

14. Here in this case, the present petitioner in para No.11 of the writ petition calculated the amount of gratuity as follows:

$$\begin{aligned} &\text{Calculation of Gratuity } \frac{(55,600) \times 15 \times 30 \text{ years}}{26} \\ &= \text{Rs } 9,62,307/- \end{aligned}$$

On the other hand, the State-respondents in para No.5 of the counter affidavit has shown the amount of calculation of service gratuity of said Nepal Kanti Roy as follows:

Based on TSCS (Revised Pay) (First Amendments) Rules-2018, the Basic Pay of Nepal Kanti Roy, the husband of the petitioner is Rs.55,600/- and as per calculation the Service gratuity is Rs.8,47,900/- and the calculation would be like as:

$$\frac{55600 \times 61}{4} \\ =8,47,900/-$$

But it is not clear as to how the said amount was calculated by the respondent-authority.

15. From the communication dated 21.06.2024 as already stated, it appears that vide memo No.F.1(8)/CEO/KGT/MC/P-III/PEN/2018-19/3556-60; Dt.30/01/2019, the respondent-authority released an amount of Rs.5,42,481/- which was within the specified time period as mentioned in sub-section 3 of Section 7 of payment of gratuity Act. Thereafter, the respondent-authority further released an amount of Rs.1,80,827/- vide memo No.F.1(8)/CEO/KGT/MC/P-III/PEN/2019-20/1856-60; Dt.23/10/2019 i.e. after elapsing of almost 09(nine) months from the specified time period and after that, the respondents further released an amount of Rs.1,24,592/- vide Memo No.F.1(8)/CEO/KGT/MC/P-III/PEN/2019-20/177-80; Dt.08/01/2020 i.e. almost after 1(one) year from the date of retirement of said Nepal Kanti Roy. The respondent-authority in the counter affidavit took the plea that after the amendment of TSCS (Revised Pay) (First Amendment) rules of 2018 came into force and after adoption by the Administrative authority being an autonomous body, the revised calculation of gratuity increased to Rs.8,47,900/- from Rs.7,23,308/-. But the respondent-authority in their counter affidavit could not give any specific account how they have calculated the amount of Rs.8,47,900/- where they themselves admitted in their notification dated 06.10.2018 that the basic pay of Nepal Kanti

Roy was enhanced to Rs.55,600/- from Rs.47,430/- as per TSCS (Revised Pay) (First Amendment) Rules of 2018 and infact, said Nepal Kanti Roy went on superannuation on retirement after the introduction of TSCS (Revised Pay) (First Amendment) Rules, 2018. In course of hearing, Learned Addl. G.A. submitted that if there is any error in the calculation then the respondent-authority shall pay the balance amount to the petitioner.

16. Learned Counsel for the petitioner in course of hearing also relied upon Annexure-14 i.e. another notification dated 08.04.1997 of the Government of Tripura, Finance Department wherein in para No.4(a) & 4(b), the following clauses are mentioned:

4. The prescribe rate of interest will be

- a. beyond 3 month after the gratuity becomes due and up to one year 7 % per annum.**
- b. beyond one year, 10% per annum**

The interest would be payable till the end of moth prescribe the month in which the payment of DCR gratuity is actually due.

In this case, the first amount of Rs.5,42,481/- was released on 30.01.2019, i.e., within the stipulated period prescribed under the Act but the second amount, i.e., Rs.1,80,827/-, was released on 23.10.2019, i.e., after a considerable period following his retirement on 31.12.2018. As such, in my considered view, the petitioner is entitled to get interest at the rate of 7% per annum on the said amount. Subsequently, the third amount, i.e. Rs.1,24,592/-, was released on 08.01.2020 i.e., more than a year later. Therefore, the petitioner is further entitled to get 10% interest per annum on the said amount.

17. From the counter affidavit and also after hearing the submission made by Learned Addl. G.A. appearing on behalf of the

State-respondents, it appears that the calculation as shown by the State-respondents in their counter affidavit was not proper and not in accordance with the specific provision of the Act. As such, the petitioner is entitled to get the balance amount as per calculation made in para No.11 of the writ petition filed by the present petitioner which may come to Rs.1,14,407/- excluding interest.

18. In the result, the writ petition filed by the petitioner is allowed. The petitioner is entitled to interest at the rate of 7% per annum with effect from 01.02.2019 to 23.10.2019 on Rs.1,80,827/- and the petitioner is further entitled to interest at the rate of 10% per annum on amount of Rs.1,24,592/- with effect from 01.02.2019 to 08.01.2020 and in addition to that, the petitioner is also entitled to the balance amount of Rs.1,14,407/- as per calculation with applicable interest as made in para No.11 of the writ petition after deducting the amount of Rs.8,47,900/- already been paid by the respondent-authority in favour of the petitioner. The respondent-authority shall pay the said amount with interest as mentioned above within a period of 4(four) months from the date of passing of this Judgment/order.

With these observations, this writ petition stands disposed of.

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

JUDGE