

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 772 of 2024

Shri Pabindra Tripura and Another
Versus
The State of Tripura and 3 Ors.

---Petitioner(s)
---Respondent(s)

WP(C) 774 of 2024

Smt. Kabita Sarkar and 3 Others
Versus
The State of Tripura and 3 Ors.

---Petitioner(s)
---Respondent(s)

WP(C) 775 of 2024

Smt. Dipali Deb Sen and 3 Others.
Versus
The State of Tripura and 3 Ors.

---Petitioner(s)
---Respondent(s)

For Petitioner(s)	:	Mr. P Roy Barman, Sr. Advocate. Ms. S. Debbarman, Advocate.
For Respondent(s)	:	Mr. SM Chakraborty, Advocate General Mr. P. Gautam, Sr. GA.
Date of hearing and date of judgment and order	:	09.04.2025
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel appearing for the parties.

[2] At the very outset, it is represented by the counsel for the petitioners that since the subject matter of all the writ petitions mentioned above came out the similar facts and circumstances, all may be heard and disposed of together. Having heard so, all the matters are clustered together as the facts involved are similar in nature and can be disposed of a common judgment.

[3] In WP(C) 772 of 2024 & WP(C) 775 of 2025, the petitioners have urged for leave encashment with interest @ 9% PA w.e.f. one month after retirement till the date of payment.

[4] The brief facts of the case are that the petitioners served the respondents and became entitled to benefit of leave encashment as at the time of retirement. Each of the petitioners has in credit 300 days of unspent earned leave. In terms of Rule 35(2) of the Tripura State Civil Service (Leave Rules) 1986, the petitioners became entitled to leave encashment benefit soon after the retirement from their services. But till date the petitioners have not been paid the benefit of leave encashment.

[5] In course of his submission, learned senior counsel for the petitioners has contended before this court that one Niyati Saha, who retired from service on 31.01.2016 on superannuation after serving under Tripura Horticulture Corporation Ltd. w.e.f. 01.03.1992 to 31.01.2016 was not paid Gratuity. Confronted with such situation, she filed a writ petition being WP(C) 224 of 2018 before this court against the Corporation Ltd. and others. In the said petition, the petitioner sought for necessary direction upon the Tripura Horticulture Corporation Ltd. and others to cause full and final payment with interest after determining the amount of Gratuity payable to her on the basis of last basic pay and DA and other factors as indicated in Section 4(2) of the Act, 1972. This court by the order dated 18.03.2019 allowed the said writ petition and directed the respondents to release all the benefits including gratuity and other pensionary benefits which the petitioner is entitled to and the said judgment has been complied with.

[6] It is further submitted that the petitioners are entitled to get benefit of unspent earned leave. The respondents have specifically and categorically represented to the petitioner, that, they are entitled to 300 days earned leave and as such the respondents are estopped from saying, that, the employees of THCL including the petitioner herein are not entitled to the benefit of unspent earned leave. If the petitioner availed the 300 days earned in their service tenure, the respondents have been under obligation to pay the petitioner for the period during which the petitioner would have been in earned leave as granted by the respondents. As the petitioner did not avail the

earned leave, the respondents are under obligation to make payment of the leave encashment benefit to the petitioner. The respondents have utilized the money belonging to the petitioner for many years and have earned interest on that amount. In view of that, the respondents are under obligation to make payment of leave encashment benefit with interest.

[7] Be it specifically mentioned here, that benefit of leave encashment is nothing but payment of salary for the leave earned and credited but not availed by an employee. An employee is entitled to leave salary for un-availed leave to a maximum limit of 300 days. It is clear that benefit of encashment of leave is nothing but payment of salary for the leave not availed by an employee and which is to his credit. It is well settled provision of law, that, so far pensionary benefits are concerned, all such benefit should be paid within one month of retirement from service, if not paid, interest is to paid for deferred payment. Even if there is no statutory prescription for paying interest for earned leave and there is also no administrative instruction, then also the pensioners are entitled to interest for deferred payment of pensionary benefit, if such payment is paid beyond one month. Leave encashment benefit is the part and parcel of pensionary benefits.

[8] It has been further contended that, notwithstanding any express provision regarding denial of payment of leave encashment benefit after retirement is concerned, the petitioner is entitled to leave encashment benefit for the simple and obvious reason, that, it is the respondents who have granted 300 days earned leave to the petitioner. As they did not avail the earned leave, the petitioners are entitled to get the benefit; so far unspent earned leave, is concerned. It is well settled position of law that pay and allowances includes benefit of leave encashment, which is nothing but salary for the un-availed leave to the credit of the employees of THCL.

[9] To support his case, the learned senior counsel for the petitioners has relied upon a judgment of this court wherein the similar benefits were sought and the

court by the order dated 26.04.2024 passed in WP(C) 489 of 2023 and batch matters has allowed the writ petition.

[10] During the course of his submission, learned senior counsel has drawn the attention of this court to the letter dated 21.09.2024 by the respondents addressed Sri Pabindra Tripura (one of the petitioners in WP(C) 772 of 2024). The relevant portion of which is extracted herein below:

iii) Now the THCL with approval of the Hon'ble Chairman inform you that a due-drawn statement of Gratuity payment for 10 years DRW service and 04 years regular term service has been framed along with 9% interest calculated up to 30th September, 2024 from the actual date of payment deducting the Gratuity payment already paid.

(Due-Drawn statement enclosed)

iv) Regarding Encashment of leave salary , there is no such rules incorporated in the Memorandum and Article of Associations of THCL, 1987 neither the erstwhile Board of Directors adopted such policies for payment of Leave Salary.

v) Furthermore the communication of the Finance Department from the original file Vide No.2(35)/THCL/214-15/PART-GRATUITY & LEAVE SALARY regarding a prima-facie decision in the 74th Board of Directors Meeting was taken to adopt Group Gratuity and Group Leave encashment scheme of LICI subject to concurrence of the Finance Deptt, Govt. of Tripura which clearly stated at Note No.10 that "Leave Salary may not be given to the employees of THCL" signed by A. Dewanjee, the then Under Secretary, Finance Department, dated 18.03.2016.

(copy of the Note Sheet enclosed)

[11] In **WP(C) 774 of 2024**, the petitioner no.1 is wife of the deceased employee who served under the respondents. The petitioner nos.2, 3 and 4 are the daughters of the deceased employee. In this petition, the petitioners are seeking to receive leave encashment for the service rendered by the deceased Amrit Lal Sakar. They have also approached this court by way of filing this writ petition for directing the respondents to release Rs.1,00,000/- which has been sanctioned vide Sanction memo dated 17.08.2017 issued by the Managing Director, Tripura Horticulture Corporation, Ltd. providing financial benefit to the next kin of deceased employee of THCL under die-in-harness scheme along with interest @ 9% per annum.

[12] For ready reference the relevant portion of the said judgment dated 26.04.2024 is extracted herein under:

[62] Monthly salary is paid for an employee for rendering his service for a period of 30 days and for a year annual salary. The earned leave is derived out of his 30 working days. Leave encashment of earned leave becomes integral part of the working days and salary. Since, petitioners served for the above period are entitled for pay. On one hand the TRTC is affirming the rights of the petitioners and requested the Govt. to provide funds and on the other hand prays to dismiss the writ as they are not entitled. The stand of the TRTC is inconsistent and the argument advanced by State through the learned Advocate General and TRTC through the standing counsel Mr. K. C. Bhattacharjee is contradicting to each other. The counter affidavit of TRTC also supports the case of the petitioners. Learned Advocate General argued that committee constituted in pursuance of the orders of the Court has recommended TRTC to give leave encashment from its own sources. Thus, TRCT can consider granting leave encashment to its employees.

[63] But for any issue between the TRTC and the State respondent, the employees of the corporation cannot be deprived of their legitimate rights and from the above mentioned letter dated 08.09.2023 submitted by Mr. S. Bhattacharjee, learned counsel for the petitioners that TRTC is ready to pay the leave encashment amount to the employees who rendered their service with utmost dignity but for the financial disability the process could not be carried out by the TRTC. Thus, this Court is of the conscious view that the petitioners are entitled for leave encashment.

[64] In view of the above discussion, the writ petitions are allowed declaring the petitioners entitled for the leave encashment and there shall be a direction to the TRTC respondents herein, to look into the matter and settle the claim of the petitioners as expeditiously as possible preferably within a period of six months from the date of receipt of the copy of this order. In default, the petitioners may avail remedies before the competent Civil Court for recovery of the said amount.

[65] With the above observations and directions, the present petitions stands allowed and disposed of. As a sequel, miscellaneous application pending, if any, shall stand closed.

[13] Learned senior counsel for the petitioners has finally prayed before this court to allow the writ petitions by directing the respondents to give leave encashment benefit to the petitioners.

[14] On the contrary, by way of filing a counter affidavit, it is submitted by Mr. S M Chakraborty, learned Advocate General for the respondents that in principle THCL might not deny the leave encashment benefit to its retired staff but no rule as such is adopted by the Governing Body (Board of Directors) of the THCL till date, except in the 74th meeting of the Board of Director of THCL held on 16th September, 2014. In the 77th Meeting of the Board of Director held on 24.08.15, the issue of Gratuity and Leave Salary for the employees of THCL was placed in the Agenda item No-3 and 6 respectively and the issue was unanimously accepted by the Board of Directors for obtaining concurrence from the Finance Department.

[15] It is further submitted by the learned Advocate General for the respondents that keeping Earned leaves in credit is at the discretion of the employee, since respondent Authority never restricted to enjoy the earned leave by the employee. However, Financial status of the THCL was never in such position that Authority could take the decision for payment of leave encashment benefit to its retired employees from the THCL own coffer.

[16] In course of his submission, it is further contended that the respondents No 3 i.e., the Managing Director of THCL has not taken any arbitrary or discriminatory action on the petitioners since the Governing Body of THCL has not adopted any rules on payment of Gratuity and Leave Encashment to the employees on superannuation neither incorporated in the Memorandum and Articles of Association of THCL. However, in the special and urgent Board of Directors meeting held on 16.07.2024, it was unanimously decided by the Board of Directors not to further burden the ex-chequer of the THCL by payment of leave encashment benefit to the employees of THCL on superannuation.

[17] Heard and perused the record at length.

[18] Having gone through the record and also having considered the submission as advanced by the learned counsel for the parties, this court is of the view that the learned counsel for the petitioners has made out his case successfully and this court finds force in the submission as advanced by him. Therefore, the petitioners in WP(C) 772 of 2024 and WP(C) 775 of 2024 are entitled for leave encashment. This court has no hesitation to hold that the argument as advanced by the learned Advocate General for the respondents does not hold any weightage. The argument of the learned Advocate General appearing for the respondents stating that there is no by-laws or any rule providing leave encashment to superannuated employees in the respondent-Corporation and since no concurrence is obtained from the Finance Department of the Government of Tripura for releasing the leave encashment, the respondents are unable

to extend any benefit of leave encashment to its employees, cannot be appreciated by this court. Moreover, this court has already dealt with similar cases by the order dated 26.04.2024 passed in WP(C) 489 of 2023 and batch matters. It was observed that for any issue between the TRTC and the state respondent, the employees of the corporation cannot be deprived of their legitimate rights.

[19] With the above observation and direction, the writ petition no. WP(C) 772 of 2024 & WP(C) 775 of 2024 stand allowed and disposed of. The respondents shall extend the leave encashment to the petitioners as sought for.

[20] In respect of WP(C) 774 of 2024, this court, without expressing any opinion in the amount, holds that the petitioners are entitled to the financial benefits. It is open for the petitioners to provide appropriate information with regard to the leave encashment and further information, if any, in respect of the amount of Rs.1,00,000 (Rupees one lakh only) released as per sanction memo dated 17.08.2017. The petitioner shall approach the respondents within two weeks from today. Thereafter, the respondents on receipt of such information shall release the undisputed amounts forthwith.

[21] With the above observation and direction, the writ petition being WP(C) 774 of 2024 stands disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

Dipak

**DIPAK
DAS**

Digitally signed by
DIPAK DAS
Date: 2025.04.11
12:50:50 +05'30'