

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 289 of 2015

Sri Ranjit Kumar Das,
Son of Late Niranjan Das,
Village Madhya Banamalipur,
P.O. Agartala, PIN-799001,
West Tripura.

.....Petitioner

- V E R S U S -

- 1. The State of Tripura,**
Represented by the Principal Secretary
Department of Industries and Commerce,
Government of Tripura, Civil Secretariat Complex,
P.O. Kunjaban, Agartala, West Tripura
PIN-799006.
- 2. Tripura Small Industries Corporation Ltd.**
A Government of Tripura Undertaking,
Kunjaban Colony, Agartala-799006.
(To be represented by the Managing Director,
Tripura Small Industries Corporation Ltd.
Kunjaban Colony, Agartala-799006,
P.S. East Agartala, West Tripura.
- 3. The Managing Director**
Tripura Small Industries Corporation Ltd.
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala
PIN-799006, West Tripura.
- 4. The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 291 of 2015

Sri Gakulnandan Saha,
Son of Late Girindra Kr. Saha,
Village Bordowali,
P.O. - AD Nagar, PIN-799003,
West Tripura.

.....Petitioner

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Represented by the Principal Secretary
Department of Industries and Commerce,
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4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 294 of 2015

Sri Rahini Kr. Paul,
Son of Late Jatindra Kr. Paul,
Village-A.D. Nagar (Suryapara),
Road No. 1, P.O.-A.D. Nagar,
PIN-799003, West Tripura.

.....Petitioner

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Represented by the Principal Secretary
Department of Industries and Commerce,
Government of Tripura, Civil Secretariat Complex,
P.O. Kunjaban, Agartala, West Tripura
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4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.
5. **The Controlling Authority,**
Payment of Gratuity Act, 1972
(Chief Labour Officer),
West District Labour Office,
Agartala, West Tripura.

.....Respondents.

WP(C) 295 of 2015

Sri Samir Chakraborty,
Son of Late Manoranjan Chakraborty,
Village-A.D. Nagar, Road No. 9,
(Suryapara) P.O.-A.D. Nagar,
PIN-799003, West Tripura.

.....Petitioner

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Represented by the Principal Secretary
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PIN-799006, West Tripura.
4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura

.....Respondents.

WP(C) 298 of 2015

Sri Subhash Chandra Biswas

Son of Late Sachindra Ch. Biswas,
Village-Madhya Kashipur (Icha Mlya Road),
P.O. Reshambagan, PIN-799008,
West Tripura.

.....Petitioner

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4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 304 of 2015

Sri Haran Chandra Saha

Son of Late Prasanna Kr. Saha,
Village-Radhanagar, P.O. Agartala,
PIN-799001, West Tripura

.....Petitioner

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Represented by the Principal Secretary
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Government of Tripura, Civil Secretariat Complex,
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PIN-799006, West Tripura.

4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 305 of 2015

Sri Haradhan Saha
Son of Late Ruhini Kr. Saha
Village-Dhaleswar, Nutan Palli,
Road No. 14, PO-Dhaleswar,
PIN-799007, West Tripura.

.....Petitioner

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Tripura Small Industries Corporation Ltd.
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala
PIN-799006, West Tripura.
4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 306 of 2015

Sri Prahlad Ch. Banik,
Son of Late Hari Das Banik
Village-Bridhyanagar,
P.O. Ranirbazar, PIN-799035
West Tripura.

.....Petitioner

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Department of Industries and Commerce,
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P.N. Complex, Gurkhabasti,
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4. **The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.

.....Respondents.

WP(C) 307 of 2015

Sri Rabindra Kumar Debnath,
Son of Late Kamini Kumar Debnath,
Village-Kunjaban Colony,
P.O.-Abhaynagar, PIN-799005.

.....**Petitioner**

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- 1. The State of Tripura,**
Represented by the Principal Secretary
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- 2. Tripura Small Industries Corporation Ltd.**
A Government of Tripura Undertaking,
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Kunjaban Colony, Agartala-799006,
P.S. East Agartala, West Tripura.
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Tripura Small Industries Corporation Ltd.
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala
PIN-799006, West Tripura.
- 4. The Director,**
Department of Industries and Commerce,
P.N. Complex, Gurkhabasti,
P.O. Kunjaban, Agartala,
PIN 799006, West Tripura.
- 5. The Sub-Divisional Magistrate,**
Sadar, Agartala, West Tripura
P.O. Agartala, PIN-799001
(The Certificate Officer)

.....**Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
THE HON'BLE MR. JUSTICE U.B. SAHA

In all the cases:

For the petitioners	: Mr. P Roy Barman, Advocate. Mr. Samarjit Bhattacharji, Advocate Mr. K Nath, Advocate
For the respondent-State	: Mr. S. Chakraborty, Addl. G.A Ms. AS Lodh, Addl. GA
For the respondent –TSICL	: Mr. S Saha, Advocate
Date of hearing & delivery of judgment and order	: 08.10.2015
Whether fit for reporting	: No

Judgment and Order (Oral)

All these writ petitions are being disposed of by one judgment since the issues of law involved are same.

2. The petitioners are all employees of the Tripura Small Industries Corporation Ltd. (*hereinafter referred to as "TSICL"*). They have retired on attaining the age of superannuation on separate dates. Their grievance is that they have not been paid their full gratuity under the Payment of Gratuity Act, 1972 within thirty days of their retirement from service. It is the case of the petitioners that their gratuity has been limited to a maximum of Rs.3,50,000/- whereas under law w.e.f. 2010 the maximum amount of gratuity payable has been increased to Rs.10,00,000/-.

3. On behalf of the respondent-TSICL one of the issues raised is that the TSICL is running in losses and it is bound by the directions of the State Government and since the State Government has not directed it to give gratuity over and above Rs.3,50,000/-, it cannot make payment above this amount. Sri Saha, learned counsel appearing for the TSICL also submits that the TSICL has entered into an agreement with the Life Insurance Corporation of India (*hereinafter referred to as "LIC"*) for payment of gratuity and it is the duty of the LIC to pay the gratuity. He prays that the LIC may be made a party to the petitions.

4. The issues which arise in these cases are covered by the judgment of this Court delivered in **WP(C) 247 of 2013 [Sri Subhas Chandra Saha Vs. The State of Tripura and Ors.]** wherein this Court has clearly held that even the State of Tripura has no power to limit the maximum amount of gratuity to less than Rs.10,00,000/-. We have clearly held that the State can only exempt any Corporation or Company from the purview of the Payment of Gratuity Act, 1972 if it ensures that there is some other retiral scheme which is more beneficial to the employees than the provisions of the Payment of Gratuity Act, 1972. Therefore, the minimum benefit which an employee has to get is that which is available under the provisions of Payment of Gratuity Act, 1972. We have in the said case further held as follows:

“11. Next comes the question, as to whether the State has any power to exempt any establishment which falls within the purview of the Payment of Gratuity Act. Here reference may be made to Section 5 of the Payment of Gratuity Act, 1972, which reads as follows:

“5.Power to exempt.– (1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.”

12. A bare reading of Section 5 makes it absolutely clear that the State can exempt any establishment etc. from the provisions of the Act only after the State is satisfied that the employees of such establishment etc. are in receipt of gratuity or pensionary benefits not

less favourable than the benefits conferred under the Act. Therefore, every employee who is covered under the Act must get the amount which is payable under the Act. However, if an employer provides such terms of employment which are more beneficial to the employees than the provisions of the Payment of Gratuity Act then only can the State Government exempt such establishment from the rigours of Payment of Gratuity Act. This is not the case here.”

In view of the above discussion, we have no hesitation in holding that the petitioners who have all retired after 2010 are entitled to payment of gratuity in accordance with the Payment of Gratuity Act, 1972 and the maximum gratuity cannot be limited to Rs.3,50,000/- but the maximum gratuity payable would be Rs.10,00,000/-. Therefore, the respondent-TSICL is required to calculate the gratuity payable to each one of the petitioners by taking into consideration his length of service after deducting the amount already paid to the petitioners, the balance amount shall be paid to the petitioners within six months from today.

5. It has been stated by Sri Saha that the gratuity should be paid by the LIC. That is a contract which has been entered into between the TSICL and the LIC. The liability to make payment of gratuity is that of the TSICL under the Payment of Gratuity Act, 1972. Therefore, we direct that in case the TSICL feels that this amount has to be paid by the LIC then it must immediately, within 15 days of the receipt of this order, convey the same to the LIC and if under the terms of the agreement entered into between the TSICL and the LIC, the

cases of the petitioners are covered and are to be paid by the LIC then the LIC shall deposit the gratuity with the TSICL. If some extra premium has to be paid on this count then the TSICL shall ensure that this premium is deposited within a period of three months from today so that the payment of gratuity is made to the petitioners within six months from today. In case the payment of gratuity is not made within six months from today then the petitioners, on the amount of gratuity, shall also be entitled to interest @ 9% per annum from the date of their retirement till payment of the same.

6. We have also been informed that in some cases the LIC has already calculated the gratuity by taking in to account the upper limit of Rs.10,00,000/- and has handed over the money to the TSICL but the TSICL has not released the amount over and above Rs.3,50,000/- on the ground that no instructions have been received from the State Government. In all these cases the TSICL shall pay interest @ 12% per annum from the date on which the amount was handed over to the TSICL by the LIC.

7. In one of the cases, i.e. WP(C) 307 of 2015, we have noted that the Controlling Authority under the Payment of Gratuity Act, 1972 passed an order on 19th July, 2012 directing that gratuity be paid. In that case, interest @ 9% per annum shall be paid w.e.f. 19th July, 2012, till the date of payment.

8. We are also constrained to observe that in this case though the Controlling Authority passed the order and the matter was taken up before the Addl. Sub-Divisional Magistrate, Sadar and he passed an order on 19th April, 2013 but even thereafter, he has not passed any effective order for making payment. In this case the State shall bear costs of Rs.5,000/- and if the State so desires it can recover this cost from the concerned Addl. Sub-Divisional Magistrate, Sadar. In all other cases the TSICL will not be liable to pay interest if the balance amount of gratuity is deposited within six months from today. We are aware that there is a statutory requirement for payment of interest but keeping in view the financial situation of the TSICL we have given it six months more time to pay this amount.

9. With the above observations and directions, these writ petitions are disposed of, in the aforesaid terms.

JUDGE

CHIEF JUSTICE

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