HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.128/2020

Sri Sunil Bhowmik

…….. *Petitioner(s).*

Vs.

The State of Tripura and ors.

…….. *Respondent(s).*

For Petitioner(s) : Mr. Kawsik Nath, Advocate.
For Respondent(s) : Mr. B S Bhowmik, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

_O_R_D_E_ R_

11/12/2020

Petitioner is a retired employee of Tripura Handloom and Handicrafts Development Corporation Ltd.*(hereinafter to be referred to as the said Corporation)*. He has prayed for a direction to the Corporation to pay full gratuity of a sum of Rs.13,39,615/- with interest. The petitioner retired w.e.f. 31st May, 2019 as a Junior Salesman after completing about 37 years of service. His gratuity as per the rules worked out to Rs.13,39,615/-. However, the employer applied the ceiling of Rs.10,00,000/- for payment of gratuity which amount was duly paid. Case of the petitioner, however, is that the ceiling for payment of gratuity under the Payment of Gratuity Act, 1972 has been revised by the

Government of India under a notification dated 29th March, 2018 to Rs.20,00,000/-. The petitioner, therefore, should have been paid full gratuity amount of Rs.13,39,615/-. He, therefore, prayed for payment of the remaining amount with interest.

The case of the Corporation is that the Government of Tripura has not yet authorised the Corporation to pay gratuity applying the revised ceiling on account of which the payment of gratuity to the petitioner has been limited to Rs.10,00,000/-.

Similar issue came up for consideration before this Court in case of ***Sri Bhupati Debanth Vs. The State of Tripura and Ors., WP(C) No.1054/2019*** which was decided on 13th February, 2020. The said petitioner was also an employee of Tripura Handloom and Handicrafts Development Corporation. After referring to the statutory provisions it was held and observed as under :

> " * * *
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> *10. It can thus be seen that insofar as the payment of gratuity, its computation and the ceiling up to which such amount can be paid as referred to in Section 4 of the said Act, the term "appropriate Government" has no bearing. This distinction is also apparent from the statement of objects and reasons which provides that for the purpose of uniformity, the Central Act was envisaged. At the same time, appropriate Government is for the purpose of administering the Act. The ceiling limit for payment of gratuity is provided in sub-*

section (3) of Section 4. Previously, such ceilings were contained in the sub-section itself. Pursuant to amendment by virtue of Act 12 of 2018 the power to prescribe such ceiling has been vested in the Central Government to be exercised by issuing notification in this regard. It is in exercise of such delegated powers of legislation that the Central Government has issued a notification dated 29.03.2018 which reads as under:

> *"S.O. 1420 (E).—In exercise of the powers conferred by sub-section (3) of section 4 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specifies that the amount of gratuity payable to an employee under the said Act shall not exceed twenty lakh rupees."*

11. This revised ceiling thus would apply to all establishments irrespective of whether they are controlled or governed by the State or the Central Government as the appropriate Government. The stand of the respondents, therefore, that unless and until such revised ceiling of payment of gratuity is adopted by the State Government, the employees of the said corporation cannot claim benefit of such revised limit cannot be accepted. Revised ceiling limit of ₹20,00,000 (rupees twenty lakhs) would be applicable to the petitioner.

12. The corporation cannot cite the reason of financial constraints indefinitely for paying post retiral benefits of its employees. The petitioner has put in more than 29 years of service. His service is not governed by the pension scheme. After his retirement, therefore, he would have only savings in the form of gratuity, provident fund accumulated in his account and leave encashment, if any, to fall back upon in his old age. Such amount must, therefore, be paid over to him as soon as possible.

13. Under the circumstances, petition is disposed of with following directions:

(i) As provided earlier, the petitioner shall apply to the respondent No.2 stating his calculation of payable gratuity. The respondent No.2 shall examine the petitioner's calculation and convey to him if any gratuity remains still payable;

(ii) While calculating such gratuity, revised limit of ₹20,00,000 (rupees twenty lakhs) shall be applicable;

(iii) If there is any shortfall in payment of gratuity, the same shall be paid within a period of 4(four) months from today with simple interest @ 7.5% per annum from one month after the date of superannuation till actual payments;

(iv) The remaining amount of leave encashment shall be released within a period of 4(four) months from today. The entire leave encashment payment shall carry simple interest @ 7.5% per annum from one month after the date of retirement till actual payments;

(v) The gratuity already paid shall also carry simple interest @ 7.5% per annum from one month after the date of retirement till actual payments.

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

Under the circumstances, this petition is also allowed. It is provided that the respondents shall pay the remaining sum of Rs.3,39,615/- to the petitioner with simple interest @ 7.5% per annum after completion of the period of 1(one) month of his retirement till actual payment.

The petitioner had also made a prayer for release of the leave encashment benefit. The respondents in the reply have stated that the

same has since been paid. No further direction in this respect is, therefore, issued.

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

(AKIL KURESHI, CJ)

HIGH COURT OF TRIPURA

Sukehendu