HIGH COURT OF TRIPURA
AGARTALA

W.P. (C) No.537/2020

Sri Tapas Guha

.....Petitioner(s)

Versus

Tripura Tea Development Corporation Ltd. and others

.....Respondent(s)

W.P. (C) No.538/2020

Sri Vishma Pratim Datta

.....Petitioner(s)

Versus

Tripura Tea Development Corporation Ltd. and others

.....Respondent(s)

W.P. (C) No.539/2020

Sri Sanjib Kumar Lodh

.....Petitioner(s)

Versus

Tripura Tea Development Corporation Ltd. and others

.....Respondent(s)

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For Petitioner(s) : Mr. Kawsik Nath, Advocate.

For Respondent No.3 : Mr. Debalay Bhattacharjee, GA.

For Respondents No.1 & 2 : Mr. B. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Order

19/11/2020.

These petitions involve similar legal issues, though individual facts are slightly different. They have been heard together and would be disposed of by this common order. All petitioners were the former employees of Tripura Tea Development Corporation Ltd., respondent No.1 herein (hereinafter to be referred to as 'TTDC Ltd.'). They claim benefit of revised ceiling of Rs.20,00,000/- for payment of gratuity upon the retirement. For convenience, further facts may be noted from W.P. (C) No.537 of 2020. Petitioner therein joined the service of the said Corporation on 01.02.1985. He retired on superannuation with effect from 31.12.2018 after completing 33 years of service. At the time of retirement, his basic pay was Rs.70,500/-. As per the computation of gratuity based on such basic pay, the amount claimed to Rs.13,42,211/-. The respondent No.1-Corporation paid only Rs.10,00,000/- on the ground that the ceiling of gratuity payable at the relevant time was Rs.10,00,000/-. Case of the petitioner is that the Government of India vide its Notification dated 29.03.2018 had revised the ceiling for payment of gratuity Rs.20,00,000/-. This was done in exercise of powers under the Payment of Gratuity Act. Since the petitioner retired after the said Notification was issued, this

revised ceiling should have been applied in his case. The petitioner made representations to the employer for releasing full gratuity. Since no relief was granted, he filed this petition.

Facts in other petitions are similar. The dates of retirement of petitioners and a computation of gratuity payable vary. However, in the other petitions also, the petitioners retired on superannuation after 29.03.2018 when the Government of India issued the said Notification and in their case is also the Corporation has applied the original ceiling of Rs.10,00,000/- for payment of gratuity, though the calculation of the gratuity in their cases also exceeded Rs.10,00,000/-.

The stand taken by the Corporation in the affidavit-in-reply is that the Corporation in its General Meeting dated 27.09.2018 had resolved to apply the revised ceiling of Rs.20,00,000/- for payment of gratuity, however, to implement the said decision, Government sanction was necessary. No such permission was granted by the Government. The petitioners therefore could not be paid the full gratuity. They have been paid gratuity of Rs.10,00,000/- by providing the existing ceiling.

Such an issue has been examined by this Court earlier. In case of ***Sri Bhupati Debnath, W.P. (C) No.1054 of 2019***, decided on 13.02.2020, the Single Judge considered the applicability of revised ceiling for an employee of Tripura Handloom and Handicrafts Development Corporation without the Government of Tripura issuing a Notification for revision of

the ceiling for payment of gratuity. The issue was considered in following manner:

> "5. The statement of objects and reasons for enactment of the Payment of Gratuity Act, 1972 (the Act, for short) reads as under:
>
> "STATEMENT OF OBJECTS AND REASONS:
>
> There is at present no Central Act to regulate the payment of gratuity to industrial workers, except the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act. 1995. The Government of Kerala enacted legislation last year for payment of gratuity to workers employed in factories, plantations, shops and establishments. The West Bengal Governor Promulgated an Ordinance on the 3rd June, 1971 prescribing a similar scheme of gratuity. This Ordinance has since been replaced by the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971, enacted by the President on 28th August, 1971. Gratuity is also being paid by some employers to their workers under Awards and Agreements.
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> ***Since the enactment of the Kerala and the West Bengal Acts, some other State Governments have also voiced their intention of enacting similar measures in their respective States. It has become necessary, therefore, to have a Central law on the subject so as to ensure a uniform pattern of payment of gratuity to the employees throughout the country. The enactment of a Central law would also avoid different treatment to the employees of establishments having branches in more than one State when, under the conditions of their service, the employees are liable to transfer from one State to another.***

The proposal for Central legislation on gratuity was discussed in the Labour Ministers' Conference held at New Delhi on 24th and 25th August, 1971 and also in the Indian Labour Conference at its session held on the 22nd and 23rd October, 1971. There was general agreement at the Labour Ministers' Conference and the Indian Labour Conference that Central legislation on payment of gratuity might be undertaken as early as possible. It is accordingly proposed to undertake such legislation.

In enacting the President's Act for West Bengal in August, 1971, care has been taken to so design its provisions that they could serve as far as possible as norms for the Central law. The Bill has, therefore, been drafted on the lines of the West Bengal Employees' Payment of Compulsory Gratuity Act, 1971 with some modifications which have been made in the light of the views expressed at the Indian Labour Conference relating to forfeiture of gratuity in cases of dismissal for gross misconduct.

The Bill provides for gratuity to employees drawing wages up to Rs. 270 per month in factories, plantations, shops, establishments and mines, in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease. The quantum of gratuity payable will be 15 days' wages based on the rate of wages last drawn by the employees concerned for every completed year of service or part thereof in excess of six months subject to a maximum of 15 months' wages. The term "wages" will mean "basic wage plus dearness allowance".

It is proposed that the appropriate Government for administering the Act in relation to establishment

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belonging to or under the control of the Central Government or a railway company, or mine, a major port and oilfield or in relation to establishments having departments or branches in more than one State, will be the Central Government, and, in relation to other establishments, the State Government.

The Bill seeks to give effect to the above proposals."

With these objects in mind to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith or incidental thereto the said Act was enacted.

6. Clause (a) of Section 2 of the Act defines the term "appropriate Government" as under:

"2. (a) "appropriate Government" means,—

(i) in relation to an establishment—

(a) belonging to, or under the control of, the Central Government,

(b) having branches in more than one State,

(c) of a factory belonging to, or under the control of, the Central Government,

(d) of a major port, mine, oilfield or railway company, the Central Government,

(ii) in any other case, the State Government."

7. This distinction between the State or the Central Government being an appropriate Government in relation to different classes of establishments, manifests itself in various sections contained in the said Act. For example, under Section 3 the appropriate Government may, by notification, appoint an officer to be a

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Controlling Authority who shall be responsible for the administration of the Act. Different Authorities may be appointed for different areas. Under Section 4A the appropriate Government may notify date with effect from which every employer other than an establishment belonging to or under the control of the Central or the State Government would have to obtain an insurance for liability for payment of gratuity. Under sub-section (1) of Section 5 the appropriate Government may by notification exempt any establishment, factory, mine or oilfield etc. from the operation of the provisions of the Act. Under sub-section (2) of Section 5 similarly the appropriate Government may notify exemption of any employee or class of employees from the operation of the provisions of the said Act.

8. However, when it comes to Section 4 of the said Act which pertains to payment of gratuity, this distinction of the appropriate Government being Central or the State Government, has no effect. Sub-section (1) of Section 4 provides that the gratuity shall be payable to an employee on termination of his employment after he has rendered continuous service for not less than five years, on his superannuation or retirement or resignation or death or disablement due to accident or disease. Sub-section (2) of Section 4 provides that 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 15 (fifteen) days wages based on the rate of wages last drawn by the concerned employee. Sub-section (3) of Section 4 which is of importance reads as under:

> "(3) The amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time."

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9. As per this provision thus the amount of gratuity payable to an employee would not exceed such amount as may be notified by the Central Government from time to time. The group of words "such amount as may be notified by the Central Government from time to time" was substituted by Act 12 of 2018 for the group of words "ten lakh rupees". This limit of ten lakhs of rupees was self in substitution of earlier limits of lesser amounts.

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."

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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."

Yet again similar question came up for consideration in case of ***Lal Zakim Rokhum Vs. Tripura Road Transport Corporation and another, W.P. (C) No.1209 of 2019***, decided on 20.02.2020. Referring to the earlier decisions the petition was disposed of with following directions:

"[7] In view of the above discussion, respondents are directed to release the remaining amount of gratuity payable to the petitioner which shall carry simple interest @ 7.5 % after completion of one month from the date of retirement till actual payment. Payment shall be made within three months from today.

[8] Petition is disposed of. Pending application(s), if any, also stands disposed of."

In the result, all the petitions are allowed. The respondents are directed to apply the revised ceiling of Rs.20,00,000/- (Rupees Twenty

lakhs) for payment of gratuity. The remaining amount of gratuity, by applying this revised limit shall be paid along with 7.5% simple interest per annum from the date of retirement till actual payment. This shall be done within 4 (four) months from today.

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

(AKIL KURESHI), CJ

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