

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No. 617 of 2023**

**Dr. Prashant Kumar,**  
Aged- 61 years,  
S/O- Lt. Krishan Lal Sharma  
C/O- Sri Sudhir Chandra Naha  
R/O- Datta Para, Jolaibari, Sabroom,  
South Tripura, Pin-799141

.....**Petitioner(s)**

**Vs.**

**1. The State of Tripura,**

To be represented by the Secretary,  
Govt. of Tripura, Tribal Welfare Department,  
New Secretariat Complex, Kunjaban,  
Agartala, West Tripura, Pin- 799006.

**2. Tribal Welfare Residential Education Institutions Society,**

Under Tribal Welfare Department, Govt. of Tripura,  
Represented by its Member Secretary,  
Gurkhabasti, Agartala, West Tripura, Pin-799006

**3. The Member Secretary,**

Tripura Tribal Welfare Residential Educational  
Institutions Society, Tribal Welfare Department,  
Govt. of Tripura, represented by its Member Secretary,  
Gurkhabasti, Agartala, West Tripura, Pin-799006

**4. The Secretary,**

Department of Finance, Govt. of Tripura,  
New Secretariat Building, New Capital Complex,  
Agartala, West Tripura, Pin- 799010

.....**Respondent(s)**

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**For Petitioner(s)** : Mr. P. Roy Barman, Sr. Adv.  
Mr. K Nath, Adv.

**For Respondent(s)** : Mr. D Sharma, Addl. GA.

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**HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

**JUDGMENT & ORDER (ORAL)**

**24.01.2024**

Heard Mr. P Roy Barman, learned Sr. counsel assisted by Mr. K Nath, learned counsel appearing for the petitioner and Mr. D Sharma, learned Addl. GA appearing for the respondents.

2. Admittedly, the petitioner was an employee of a society namely Tripura Tribal Welfare Residential Educational Institution (for short, the Society) run under the administrative control of Tribal Welfare Department, Government of Tripura. The main object of the said society is to establish, maintain, control and running of the Eklavya Model Residential School (EMR), Residential School and Ashram School in Tribal Sub-Plan area of the state. The petitioner went on retirement on 31<sup>st</sup> October, 2022 from the post of Principal and as a matter of gratuity Rs.3.50 lakhs was paid to him.

3. Dispute arose between the parties regarding quantum of actual amount of gratuity payable to the petitioner. In this writ petition, the petitioner in view of the notification issued by the Central Government making the maximum ceiling limit of gratuity to the extent of Rs. 20 Lakh issued vide SO No.1420 (e) dated 29.03.2018 by virtue of the provisions of Section 4(3) of the Payment of Gratuity Act, 1972 (for short, the Act), has claimed that his gratuity should be paid in terms of above said notification. Earlier also with similar claim the petitioner filed W.P.(C) No.284 of 2023 and vide order dated 08.05.2023 learned Single Judge observed as follows:

**[5] In view of said submission, without expressing any opinion on the merits of the case, this present writ petition is disposed of directing the respondents to consider the case of the petitioner in accordance with law within a period of three months from the date of receipt of this order. The petitioner is at liberty to provide to all the relevant materials to the respondents, if so advised.**

4. Mr. Roy Barman, learned Sr. counsel referring to the minutes of sixth meeting of Board of Directors of the Society held on 05.09.2009, submits that as against the item No.04, a decision was taken by the Board that the benefit of gratuity as per Payment of Gratuity Act, 1972 to the staff under the society will be provided with

immediate effect and for implementation of the said decision, Group Gratuity Scheme was decided to be purchased involving an amount of Rs.5,74,016/- for the liability up to the financial year of 2008-2009 which was also approved by the Board of Directors/Governors. Further decision in this regard was taken that the amount required for Group Gratuity Scheme in future shall be deposited with the approval of the Board of Directors.

**5.** Mr. Roy Barman, learned Sr. counsel therefore argued that when the Society has made the payment under Payment of Gratuity Act, 1972 applicable to the employees of the society, automatically as per the provision of Section 4 Sub-Section 3 of the Act, the employees are entitled to the gratuity as per the enhanced ceiling limit as determined from time to time by the Central Government. As such, because the date of retirement of the petitioner was 31.10.2022, his case will be governed by the ceiling limit of Rs.20 lakhs as indicated above. Mr. Roy Barman, learned Sr. counsel therefore, prays for issuing a direction to the respondents for paying the gratuity as per that ceiling limit.

**6.** Mr. D Sharma, learned Addl. GA strongly opposes the contention of Mr. Roy Barman, learned Sr. counsel mainly on the ground that the Society is run by its own funding received from the Central Government from time to time. There is also no other fund source and, therefore, scarcity of fund always remains in the society. More so, as the Society is under the control and management of the State government, without approval of the Finance Department, Government of Tripura, no payment of excess amount under the new Notification of the Central Government can be made.

**7.** Mr. Sharma, learned Addl. GA further submits that as per the Minutes of the sixth meeting of the Board of Directors, it was clearly reflected that the Group Gratuity Scheme shall be purchased and therefore, the petitioner is entitled to get the gratuity as per the said Group Gratuity Scheme and not beyond that.

**8.** Referring to para 17 of the counter affidavit, Mr. Sharma, learned Addl. GA further contends that the Board of Directors approved the payment of gratuity by way of subscribing related scheme under Life Insurance Corporation of India and agreed to provide gratuity at the rate of Rs.3.50 lakhs at par with State Government employees on attaining the age of superannuation and accordingly, the petitioner was paid such gratuity @ Rs.3.50 lakhs as per prevailing provision of the Society. As per Section 4(A) of the Act, the employer is required to obtain insurance for payment of such gratuity under the Act from Life Insurance Corporation of India and accordingly such scheme was procured from said corporation by the Society and therefore, the petitioner will be governed by the said scheme.

**9.** Considered the rival submissions.

**10.** Section 14 of the Act gives an overriding effect upon all other enactment or rule made thereunder other than this Act or any instrument or contract having effect by virtue of any enactment other than the Act of 1972. The sixth meeting of Board of Governors has categorically decided to introduce the said Act in their establishment. Section 4, Sub Section 3 of the Act envisages further that 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.

**11.** A co-equal bench of this court in **Sri. Bhupati Debnath vs. The State of Tripura & Ors.** decided on 13<sup>th</sup> Feb, 2020 in WP(C) No. 1054 of 2019 has exhaustively dealt with the matter whether any institution where the payment of Gratuity Act applies, can be allowed to make any payment of gratuity to its employee going below the limit as is prescribed by the Central Government from time to time by virtue of Section 4(3) of the Act. The relevant portion of that judgment is extracted below :-

**"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 Rs.20,00,000(rupees twenty lakhs) would be applicable to the petitioner."**

**12.** Therefore, in view of above provisions of the Act and also the decision of this court as extracted above, the law is now settled that when in any establishment, the provisions of the Payment of Gratuity Act, 1972 is applicable, automatically, the calculation shall have to be made as per the limits as is prescribed by the Central Government from time to time.

**13.** Mr. Sharma, learned Addl. GA though referred the provision of Section 4(5) of the Act to the effect that nothing in the provision of Section 4 of the Act shall affect the right of an employee to receive the better terms of gratuity under any award or agreement or contract with the employer. However, the said provision itself is indicative of the fact that the Act being a beneficial legislation, the entitlement of an employee cannot be reduced below the prescribed ceiling limit under Section 4(3) of the Act, under any award, agreement or contract, rather this provision approves receiving of a better gratuity than what is notified by the Central Government.

**14.** Mr. Sharma, learned Addl. GA also argued that the fund flow of the Society is from the Central Government and therefore, the Central Government was a necessary party and as they have not been made party in this case, so this writ petition itself is not maintainable. This plea however has not been taken in the counter affidavit as submitted from the side of the respondents. The primary responsibility of payment of gratuity is upon the society and not upon the Central Government. Therefore such submission cannot be accepted.

Considering thus, the writ petition is allowed.

The respondents are directed to make payment of gratuity to the petitioner in accordance with provisions of the Act treating the

maximum ceiling limit of the gratuity to be Rs.20 lakhs as notified by the Central Government vide notification dated 29.03.2018. The petitioner will also be entitled to get interest upon the rest amount of gratuity @ 7% per annum with after expiry of 30 days from the date of his retirement till payment.

The entire exercise should be completed by the respondents within three months.

The writ petition is accordingly disposed of.

No order as to costs.

**SATABDI  
DUTTA**  
*Satabdi*

Digitally signed by  
SATABDI DUTTA  
Date: 2024.01.26  
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**JUDGE**

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