

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.800 of 2024

Sri Sekhar Bhowmik,
Son of late Haridhan Bhowmik,
Resident of Joynagar,
H.G.B. Road, near JPC Club,
P.O. Agartala- 799 001,
District: West Tripura

-----**Petitioner (s)**

Versus

- 1. The State of Tripura ,**
To be represented by the Secretary/Principal Secretary,
GA (P&T) Department, Government of Tripura,
New Secretariat Building, New Capital Complex,
Agartala, West Tripura, PIN: 799 010
- 2. The Principal Secretary,**
Animal Resource Development Department,
Government of Tripura, Gurkhabasti,
P.O. Kunjaban, West Tripura,
PIN: 799 006
- 3. The Secretary,**
Department of Finance, Government of Tripura,
New Secretariat Building, New Capital Complex,
Agartala, West Tripura, PIN:799 010
- 4. The Director,**
Directorate for Welfare of Schedule Caste,
Government of Tripura, Gurkhabasti,
Agartala, West Tripura, PIN: 799 010
- 5. The Accountant General,**
Office of the Accountant General (A & E),
Agartala, Tripura, PIN: 799 006
- 6. The Senior Accounts Officer,**
Office of the Accountant General (A & E),
Agartala, Tripura, PIN: 799 006

----- **Respondents (s)**

For Petitioner(s)	:	Mr. Purusuttam Roy Barman, Senior Advocate Mr. Kawsik Nath, Adv.
For Respondent(s)	:	Mr. Shaktimoy Chakraborty, Advocate General Ms. Pinki Chakraborty, Adv. Mr. Pradyumna Gautam, Adv.

Mr. Debalaya Bhattacharya,
Sr.Adv.
Mr. Soumyadeep Saha, Adv.
Date of Hearing : 07.03.2025
Date of delivery of
Judgment and Order : 27.03.2025
Whether fit for
Reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of filing this writ petition the petitioner has prayed for the following reliefs:

(i) Issue Rule upon the Respondents to show cause as to why a writ in the nature shall not be issued whereby directing the Respondents to cause full and final payment to the Petitioner on the basis of Ceiling Limit of Rs.10,00,000/- by taking into account 40 years of service as rendered by the Petitioner and the last Basic pay of Rs.29,970/- and his Dearness Allowance of Rs.22,180/- after adjusting the payment already made to the Petitioner.

(ii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to cause payment of interest @ 9% per annum on the balance amount of gratuity w.e.f. the date on

which gratuity became payable i.e. 30 days after retirement from service till the date payment is made.

(iii) Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby declaring that the Notification, dt. 05.05.2009, issued by the Finance Department, Govt. of Tripura, must be made in consonance with the Payment of Gratuity Act so far determination of gratuity and ceiling limit of gratuity are concerned.

(iv) Make the rules absolute.

(v) Call for records.

(vi) Pass any further order/orders as this Hon'ble High Court considered fit and proper.

02. Heard Learned Senior Counsel Mr. P. Roy Barman assisted by Mr. K. Nath, Learned counsel appearing for the petitioner as well as Learned Advocate General Mr. S. M. Chakraborty assisted by Ms. P. Chakraborty along with Mr. P. Gautam, Learned Sr. G.A. appearing for the State-respondents and also heard Learned Senior counsel Mr. D. Bhattacharya assisted by Mr. S. Saha, Learned counsel appearing for the respondents No.5 and 6.

03. The gist of the petition filed by the petitioner is that the petitioner had joined service on 18.03.1975 in the post of A.H. Assistant, Department of Animal Resource Department. By memo dated 24.06.1988 issued by the Secretary, Government of Tripura, Appointment & Services Department on recommendation of the TPSC, the petitioner was offered a purely temporary post of Junior Grade Stenographer of Tripura Government Stenographers' Service (Class-III, Non-Gazetted) under the Govt. of Tripura on a pay of Rs.560-1300 on terms and conditions stated in the memo. During service the petitioner was selected for the post of Junior Grade Stenographer as per recommendation of the TPSC and in view of such selection, the petitioner accepted the offer of appointment vide the memo dated 24.06.1988 and joined on 09.09.1988 in the post of Junior Grade Stenographer of Tripura Government Stenographers' Service (Class-III, Non-Gazetted) under the Govt. of Tripura. After that the petitioner got promotion in the post of P.A.-I. On attaining the age of superannuation, the petitioner retired from service w.e.f. 30.04.2015. At the time of retirement, the last basic pay of the petitioner was Rs.29,970/- and D.A. was Rs.22,180/- and the petitioner was holding the post of P.A.-I, having in his credit about 40 years of service. After his retirement regular monthly pension under CCS(Pension) Rules 1972 has been sanctioned in favour of the petitioner and he is getting regular monthly pension accordingly. On retirement from

service, the petitioner became entitled to full and final payment of gratuity within 30 days from the date of retirement in terms of Section 4(3) of the Payment of Gratuity Act, 1972. As the petitioner retired from service on 30.04.2015, so the petitioner became liable to discharge their obligation of causing full and final payment of gratuity to the petitioner within the next 30 days i.e. positively by 01.06.2015 as per Payment of Gratuity Act, 1972. The Senior Accounts Officer/AAG, office of the Accountant General (A & E), Govt. of Tripura, Agartala vide memo dated 11.12.2015 accorded sanction for payment of Rs.3,00,000/- towards partial payment of gratuity. On retirement the petitioner was paid an amount of Rs.4,00,000/- towards purported full and final payment of gratuity. The said amount of Rs.3,00,000/- was paid to the petitioner much beyond the statutory period of 30 days from the date of retirement of the petitioner and later on, the remaining amount of Rs.1,00,000/- was paid to the petitioner vide memo dated 11.12.2015.

04. According to the petitioner Section-4 of the Payment of Gratuity Act, 1972 mandates that the gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than 5 years- (a) on his superannuation, or (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease. Section 4(2) also provides as to how the amount of gratuity payable to the

employee is to be determined. Section 4(3) stipulates that amount of gratuity payable to the employee shall not exceed the ceiling limit of Rs.10,00,000/-. According to the petitioner the Payment of Gratuity Act, 1972 was amended by the Payment of Gratuity (Amendment) Act, 2010. The said amendment came into force w.e.f. the date on which the notification regarding the amendment was published in the Gazette of India, Extraordinary Issue, Part-II, Section-3, Sub-Section (ii) dated 24.05.2010. In view of the amendment of the Payment of Gratuity Act, 1972 is Sub Section (3) of the Section 4, the word Rs.3,50,000/- was substituted by the word Rs.10,00,000/- thereby raising the ceiling limit of Rs.3,50,000/- to Rs.10,00,000/-. In view of such amendment which raised the ceiling limit of gratuity, the petitioner became entitled to determination of gratuity keeping in view the ceiling limit of Rs.10,00,000/-.

05. According to the petitioner at the time of retirement the last basic pay of the petitioner was Rs.29,970/- and his DA was Rs.22,180/-. As such, he was entitled to 12,03,460/- as gratuity. The petitioner submitted one representation dated 11.08.2021 to the Director, S.C. Welfare, Govt. of Tripura raising to pay gratuity in view of the ceiling limit of Rs.10,00,000/- with effect from 24.05.2010. But most arbitrarily his gratuity was calculated and paid to him and as a result, full and final payment of gratuity was not caused to the petitioner. Further according to the petitioner the rest amount of gratuity should be paid

to the petitioner keeping in view of the ceiling limit of Rs.10,00,000/- which came into effect from 24.05.2010. He was entitled to interest @ 9% per annum. So finding no way the petitioner approached the Hon'ble High Court by filing a case bearing No.WP(C)116/2022. This High Court vide judgment dated 06.09.2022 dismissed the said writ petition. After that the petitioner preferred an appeal bearing No.W.A.182 of 2022 against the judgment dated 06.09.2022 passed in WP(C)116 of 2022. The Division Bench of this High Court vide judgment and order dated 27.02.2024 disposed of the writ appeal No.W.A. 182 of 2022 by giving liberty to the petitioner to submit representation to the respondents with all relevant documents and the Hon'ble High Court also directed the respondents to dispose of the matter within a period of four months. The petitioner made detailed representation dated 29.04.2024 to the Principal Secretary, Welfare of Schedule Caste and the Director, Directorate of Welfare of Schedule Caste. It was further submitted that other similarly situated persons have been visited with a rejection orders issued by the Competent Authority rejecting the claim of the petitioner. The respondents did not take into consideration the ceiling limit of gratuity payable to the State Govt. employees as revised/enhanced by the State Government from time to time to bring parity in between the Payment of Gratuity Act, 1972 and Rule 9 of TSCS (Revised Pension) Rules.

06. The Finance Department, Govt. of Tripura issued one notification on 05.05.2009 and the said notification was in respect to the provision regulating pension and other pensionary benefits. By the said notification TSCS (Revised Pension) Rules, 2009 was notified and the said Rules so far as payment of gratuity is concerned, provides as under:

Length of Service	Rate of Gratuity
Less than 1 year	2 times of emoluments
1 year or more but less than 5 year	6 times of emoluments
5 year or more but less than 20 years	12 times of emoluments
20 years or more	½ (half) of every Completed 6 monthly period of qualifying service subject to a maximum 30 times of emoluments.

The term revised emoluments for the purpose of calculation of DCRG shall mean the last pay, i.e., the pay in the pay band plus the grade pay of the employees concerned on the date of retirement.

07. The petitioner further submitted that the Rules, 2009 is in derogation of the letter and spirit of the Payment of Gratuity Act, 1972 wherein the Act 1972, vide Section 4 (2) clearly provides that for every completed year of service or part of thereof in excess of 6 months the employer shall pay gratuity to an employee @ 15 days wage based on the date of wages last drawn by the employee concerned, any Rule cannot override and supplant the clear and unambiguous mandate of Section 4(2) of the Act and moreso, the said Rules has also supplanted the provisions of Section 4(3) of the Payment of Gratuity Act, 1972 by fixing the ceiling limit which is below the ceiling limit laid down by

the Section 4(3) of the Act. In determining the amount of gratuity payable to the petitioner, in view of the provision of Rule 8 of Tripura State Civil Service Revised (Pension) Rules, 2009, it is provided that qualifying service of 33 years shall be taken into account for determining gratuity, the total length of service of the petitioner was not taken into consideration and it was against the mandate of Section 4(3) of the Payment of Gratuity Act, 1972.

08. The petitioner further submitted that one Tarun Kr. Sinha filed a Writ Petition bearing No.WP(C)No.204 of 2020. In the said writ petition the petitioner contended that on retirement from service he ought to have been paid gratuity taking into consideration the enhanced ceiling limit of gratuity i.e. Rs.20,00,000/- which was introduced by the amendment of Section 4(3) of the Payment of Gratuity Act, 1972 w.e.f. 29.03.2018. But his gratuity was paid in terms of Rule 9 of Tripura State Civil Service (Revised Pension) Rules, 2017 on the basis of ceiling limit of Rs.10,00,000/- provided by Rule 9 of Tripura State Civil Service (Revised Pension) Rules, 2017. According to the petitioner by the order dated 27.01.2021, Hon'ble the High Court disposed of the Writ Petition No.204/2020 and in the said judgment/order this High Court held that the State Government shall revisit Rule 9 of the Tripura State Civil Services (Revised Pension) Rules, 2017 and to take proper decision enhancing maximum limit of gratuity as has been done by the Central Govt. by notification dated 29.03.2018

and this High Court also expected that parity in payment of gratuity be maintained as has been earlier maintained by the State Govt. in terms of Section 4(3) of the Payment of Gratuity Act, 1972 and until such exercise is done the petitioner shall be paid gratuity for the time being on the basis of maximum limit of Rs.10,00,000/-.

09. The Learned Single Judge at the time of disposal of the said case relied upon the judgment dated 13.02.2020 passed in connection with WP(C)No.1054/2019 (**Sri Bhupati Debnath vs. The State of Tripura & Ors.**), judgment/order dated 20.02.2020 passed in connection with WP(C)1209/2019 (**Lal Zakim Rokhum vs. Tripura Road Transport Corporation and Ors.**) and the judgment and order dated 13.02.2020 passed in connection with WP(C)1057 of 2019 (**Smt. Mamata Singha Roy vs. State of Tripura and Another**) and it was also observed that the revised ceiling limit of gratuity effected by the Payment of Gratuity Act would apply to all the establishment irrespective of whether they are controlled or governed by the State or Central Govt. as the appropriate Governing body. Finally the petitioner took the plea that the petitioner has been deprived of the actual entitlement of gratuity by invoking arbitrary ceiling limit of gratuity of Rs.4,00,000/- and he is entitled to a total gratuity of Rs.8,64,790/- as per the provisions of the Payment of Gratuity Act, 1972 with interest @ 9% per annum. It was further submitted that as per notification dated 08.04.1997 issued by the Joint

Secretary, Government of Tripura, Finance Department the petitioner is also entitled to the statutory interest in case of delay. Hence, the petitioner has filed the writ petition.

10. The state-respondents have contested the case by filing the counter-affidavit. In para No.6-11 the state-respondents have mentioned the following facts:

"6. That, with respect to paragraphs-12 to 15 of the writ petition, it is humble submitted that the petitioner was a member of Tripura Government Stenographers' Service. The petitioner's pension and gratuity are covered under the Tripura State Civil Service Rules, 2009 and also CCS (Pension Rules), 1972 as adopted by the State of Tripura. The petitioner retired from the Govt. Service in the year 2015. Therefore, his pension and gratuity matter are bound to be covered under the Notification No.F.8(3)-FIN(G)/09 dated 05.05.2009. Hence the petitioner's claim cannot be entertained as it is beyond the purview of the relevant financial rules which was in for during that time of his superannuation.

7. That, with respect to paragraphs-16 to 18 of the writ petition, it is humble submitted that the petitioner's pension and gratuity are covered under the Tripura State Civil Service Rules, 2009 and also CCS (Pension Rules), 1972 as adopted by the State of Tripura. The petitioner retired from the Govt. Service in the year 2015. Therefore, his pension and gratuity matter are covered under the Notification No.F.8(3)-FIN(G)/09 dated 05.05.2009.

8. That, with respect to paragraphs-19 to 22 of the writ petition, it is humbly submitted that the contention of the petitioner is strongly denied. The petitioner's pension and gratuity are covered under the Tripura State Civil Service Rules, 2009 and also CCS (Pension Rules), 1972 as adopted by the State of Tripura. The Finance Department vide their Notification No.F.8(3)-FIN(G)/09 dated 05.05.2009 revised the pension and other pensioner benefits of the State Government Employees enhancing the ceiling limit of death-cum-retirement gratuity from Rs.2,00,000/- to Rs.4,00,000/-. In the instant case the petitioner was retired from Government service on superannuation on 30.04.2015. At that material period the said ceiling limit of death-cum-retirement gratuity was in force. Therefore, petitioner was given an amount of Rs.4,00,000/- as gratuity following the Notification of the Finance Department dated 5th May, 2009.

9. That, with respect to paragraphs-23 to 27 of the writ petition, it is humbly submitted that it is a matter of records. Hence, the Answering Respondent has no comments.

10. That, with respect to paragraphs-29 to 30 of the writ petition, it is humbly submitted that these paras are fully related to the Finance Department since, it is related to implementation of payment of Gratuity Act, 1972. In the said Para, the main contention of the petitioner is that the revision of provision regulating pension and other pensionary benefits is in derogation of the letter and spirit of the Payment of Gratuity Act, 1972.

11. That, with respect to paragraphs-30 to 39 of the writ petition, it is humbly submitted that no Government employees had been given Rs.20,00,000/- after retirement onusperannuation as death-cum-retirement gratuity. Therefore, the petitioner, being a State Government Employee is not entitled to get retirement gratuity above the other retired employees of the State Government. It is also to mention that as per section 2(e) of the definition of payment of gratuity act, 1972 provides the following "employee" means any person (other than an apprentice) who is employed for wages whether the terms of such employment are expressed or implied, in any kind of work manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation but does not include any such post under the Central Government or a State Government and is governed by any other act by any rules providing for payment of gratuity.

In the instant case, the petitioner belonged to Tripura Government Stenographers' service i.e., under the State Government, therefore, payment gratuity act, 1972 is not applicable to him. The petitioner's pension and gratuity are covered under the Tripura State Civil Service Rules, 2009 and also CCS (Pension Rules), 1972 as adopted by the State of Tripura."

11. The respondents No.5 and 6 also have submitted separate counter-affidavit. In para No.8-12 to the counter-affidavit the said respondents No.5 and 6 in have made the following assertions:

"8. That, with respect to Paragraphs No.8 to 15, I say that the authority of Gratuity subject to ceiling limit of Rs.4,00,000 as per ROP'2009 of Notification vide No.F.8(3)-FIN(G)/09, dated 05.05.2009 was issued by the Finance Department, Govt. of Tripura, and the Answering Respondents have calculated taking into account the Basic pay only for the purpose of calculation of the Gratuity as per rules as per ROP's Notification, Amendment etc. issued by the Finance Department, Govt. of Tripura from time to time.

9. That, with respect to Paragraphs No.16 and 17, I say that the Gratuity has to calculated i.e. $\text{Rs.}29,970 \times 66/4 = \text{Rs.}4,94,505/-$ subject to maximum Rs.4,00,000/- as per rules of Notification, Amendment etc. issued by the Finance Department, Govt. of Tripura under ROP'2009 and for which the ceiling limit of Gratuity was Rs.4,00,000/-.

10. That, with respect to Paragraph No.18, I say that the Hon'ble High Court of Tripura, Agartala vide common Judgment and Order dated 06.09.2022 in WP(C) 106 of 2022, WP(C)109 of 2022, WP(C)111 of 2022, WP(C)112 of 2022, WP(C)113 of 2022, WP(C) 114 of 2022, WP(C)115 of 2022 and WP(C)116 of 2022, opined that the writ petitions merit no consideration and accordingly dismissed the demand of final payment of Gratuity of the petitioner.

11. That, with respect to Paragraphs No.19 to 20, I say that the ceiling limit of Gratuity Rs.10,00,000/- is admissible for those who have retired/died on or after 01.04.2017 as per ROP'2017, but the petitioner was

retired from his service on 30.04.2015 under ROP'2009 and for which the ceiling limit of Gratuity was Rs.4,00,000/-.

12. That, with respect to Paragraph No.21, I say that as per Notification issued by the Finance Department vide No.F.8(13)/Fin(G)/86, dated 08.04.1997 hereby mentioned that interest on gratuity shall be payable @ 7% per annum for period from beyond 3 months upto one year."

Finally the respondents by their counter-affidavit prayed for dismissal of this writ petition with the plea that this present writ petition is not maintainable.

12. The crux question to be decided in this writ petition as to whether the state government employees are entitled to get the benefit of the ceiling limit as prescribed under the Payment of Gratuity Act in respect of payment of gratuity on their retirement. Admittedly the present petitioner is a retired government employee. He retired from service on superannuation on 30.04.2015 and this present writ petition is the 3rd round litigation because earlier this present petitioner filed another writ petition before this High Court bearing No.WP(C)116 of 2022 which was dismissed by judgment dated 06.09.2022 and after that the present petitioner preferred appeal which was also disposed of with a direction when the respondents to consider the representation of the petitioner within a period of four months and after that the petitioner submitted representation on 29.04.2024 to the respective authority but as the same was not considered so again the present petitioner has been compelled to file the present writ petition.

13. When the present petitioner was retired from service that time Tripura Civil Services Revised Pension Rules, 2009 (in short Pension Rules, 2009) was in existence. The petitioner was a member of Tripura Government Stenographer's Service and definitely it was under the control of State Government. In course of hearing Learned Senior Counsel Mr. P. Roy Barman for the petitioner submitted that the petitioner should be entitled to get the amount of gratuity to Rs.10,00,000/- which was made in pursuance of the Payment of Gratuity (Amendment) Act, 2010 under sub-Section 3 of Section-4. Learned Senior Counsel further submitted that previously Learned Single Judge of this court in connection with WP(C) No.204 of 2020 directed the State Government to revisit the Rule-9 of ROP Rules, 2017 with further direction to the state government to bring parity in determining the gratuity at par with the ceiling limit, prescribed under the Payment of Gratuity Act.

14. On the other hand, Learned Advocate General Mr. S. M. Chakraborty assisted by Ms. P. Chakraborty, Learned Counsel along with Mr. P. Gautam, Learned Sr. G.A. appearing on behalf of the state-respondents submitted that the case of the petitioner is not covered by Payment of Gratuity Act, 1972 as the petitioner is not covered as an 'employee' as per the definition of 'employee' as mentioned in the Payment of Gratuity Act. As such the present petitioner is not entitled to get the ceiling limit of

Rs.10,00,000/- as made by the Payment of Gratuity (Amendment) Act, 2010 in sub-section 3 of Section-4. Now for the sake of convenience, I would like to refer herein below the definition of employees as mentioned in Section 2(e) of the Payment of Gratuity Act which reads as under:

"2[(e) "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applied, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity;]"

15. On perusal of the said definition it is clear that the law makers excluded the employees of state government as well as the central government from the applicability of the Payment of Gratuity Act, 1972 in case their payment of gratuity is regulated or governed by the separate Act or Rules. Here in the State of Tripura and since the petitioner was a state government employee and there is no such evidence on record that the state government has adopted the relevant provision of the Payment of Gratuity Act. As such, it appears that the status of the present petitioner as an 'employee' of the State Government is separated from the definition of 'employees' like factory, mine, oilfield, plantation, port, railway company or shop or other establishment in respect of payment of gratuity.

16. In course of hearing of argument it was fairly submitted that the petitioner was paid gratuity as per the

Pension Rules of 2009 by which he was governed and during the service tenure the petitioner was governed by the Tripura State Civil Services (Revised) Pension Rules, 2009 (in short Pension Rules, 2009) which makes specific provision to regulate payment of gratuity to the employees of the state government and Rule-8 of the Pension Rules prescribes ceiling limit of 4,00,000/- for the employees proceeded for superannuation/retirement w.e.f. 01.01.2009. As already stated the petitioner was retired from service on superannuation on 30.04.2015. Now for the sake of convenience, I would like to mention here the relevant provision of Rule-8 of the Tripura State Civil Service Revised (Pension) Rules, 2009 which reads as follows:

"8.DEATH-CUM-RETIREMENT GRATUITY:

The existing ceiling limit of Death-cum-Retirement Gratuity is enhanced from Rs.2.00 lakhs to 4.00 lakhs for employees proceeded on superannuation/retirement with effect from 01.01.2009. The other conditions of the existing formula of computation of DCRG amount will remain unchanged.

In case of death in harness the following table shall continue to be followed-

Length of Service	Rate of Gratuity
Less than 1 year	2 times of emoluments
1 year or more but less than 5 year	6 times of emoluments
5 year or more but less than 20 years	12 times of emoluments
20 years or more	½ (half) of every Completed 6 monthly period of qualifying service subject to a maximum 30 times of emoluments.

17. Since there is no evidence on record that the State of Tripura has adopted the Payment of Gratuity (Amendment) Act, 2010 specifically the provision of sub-

section-3 of Section 4 as such the petitioner being an employee of the state government would be entitled to get the benefit of gratuity as per Pension Rules, 2009 as the petitioner retired from service while the said pension rules was in force.

17. The state-respondents already in their counter-affidavit stated that the petitioner was given an amount of Rs.4,00,000/- as gratuity following the notification of the Finance Department dated 05.05.2009 and by the said notification bearing No.F.8(3)-FIN(G)/09 the Finance Department revised the pension and other pensionary benefits of the state government employees enhancing the ceiling limit of death cum retirement gratuity from Rs.2,00,000/- to Rs.4,00,000/- and at that material period when the petitioner was retired from government service on superannuation on 30.04.2015 the said ceiling limit of Death-Cum-Retirement-Gratuity was in force. So it appears to this court that the state-respondents have not committed any error in making payment of gratuity to the present petitioner to the extent of ceiling limit of Rs.4,00,000/-. Now we are to see the observation of the judgment made by Learned Single Judge in connection with WP(C)204 of 2020 as advanced by Learned Senior Counsel Mr. P. Roy Barman in course of argument that by the said judgment the state-respondents were directed to consider the matter of payment of gratuity bringing parity with the Central Act

in respect of determination of ceiling limit of gratuity. I have also gone through the said judgment. For the sake of convenience I would like to refer herein below the relevant paragraphs of the judgment which runs as follows:

"9. Having appreciated the submissions of the learned counsel appearing for the parties, an apparent conflict between Rule-9 of the Tripura State Civil Services (Revised Pension) Rules, 2017 and Section-4(3) of the Payment of Gratuity Act has emerged. Since, the Central Government has enhanced the maximum limit of gratuity to Rs.20,00,000/- by the notification as stated above and it is noticed that in the past the state has followed the maximum limit for payment of gratuity coterminus to what had been determined by the Central Government, there is a pressing necessity to revisit the said provision. In view of the definition of "employee" as provided in Payment of Gratuity Act and for separation of power [6] between the Central Government and the State Government in respect of the employment and other related areas regarding the state government employees, no doubt that the state government has the authority to determine the pay and allowances and other benefits of the state government employees. But Payment of Gratuity Act, 1972 being a piece of central legislation has its own sway. Therefore, the state government is not expected to take a contrary stand, even though, the notification determining the maximum limit of the payment of gratuity Act has been issued by the Central Government pursuant to the power conferred by Sub-Section-3 of Section-4 of the Payment of Gratuity Act, 1972.

10. A former notification for amendment by the state government would dispel the confusion that is reigning for the time being. In defining „employee“, it has been provided that the central government and the state government employees have been excluded from the definition of employee for purpose of the Payment of Gratuity Act, 1972 if their payment of gratuity is regulated by the separate Act or the Rules. Those employees who are working under the central government or the state government would stand excluded from the definition of employee [see Section-2(1) of the Payment of Gratuity Act, 1972], in the event if their payment of gratuity is governed by any other Act or by any Rules providing for payment of gratuity. In the present case, the state government employees are governed by Tripura State Civil Services (Revised Pension) Rules, 2017. As such, the petitioner may not be treated as „employee“ for general purpose of applying the provisions of the Payment of Gratuity Act, 1972."

18. On perusal of the said judgment of the Learned Single Judge i.e. another Coordinate Bench of this High

Court it appears that by said judgment Learned Single Judge did not issue any direction to the state-respondents to amend the Rule-9 of the Tripura State Civil Services (Revised Pension) Rules, 2017 rather asked the Govt. to revisit the Rule-9 to bring parity. Until and unless the said rule is amended or there is any specific amendment in the Payment of Gratuity Act specifically the definition of Section 2(e) i.e. 'employees' it appears that it would be difficult on the part of the state-respondents to consider the claim of the present petitioner. From the Act of 1972 it is clear that the said act was enacted to provide payment of gratuity to the employees engaged in factories, mines, oilfield, plantation, port, railway companies, shop or other establishment and for the matters connected therewith and incidental there to.

19. After going through the Payment of Gratuity Act it appears that in Section 1(3) of the said Act it was mentioned the name of the 'organization' where the act would apply. Further Section 2(a) defines 'appropriate government', Section 2(d) defines 'controlling authority', Section 2(f) defined 'employer', Section 2(g) defines 'factory', Section 2(i) defines 'major port', Section 2(j) defines 'mine', Section 2(k) defines 'notification', Section 2(l) defines 'oilfield', Section 2 (m) defines 'plantation', Section 2 (n) defines 'port' and Section 2(p) defines 'railway company'. From the definition of the aforesaid provisions it

is crystal clear the legislature at the time of making of laws clearly intended to apply and extended the benefit of to the employees of the aforesaid organization only including the employees of the establishment belonging to or under the control of central government or the state government but excluded the person who holds post under the central government or the state government and are governed by other act or by any rules providing for payment of gratuity have not been brought within the ambit of Payment of Gratuity Act, 1972.

20. Further, for determining the maximum ceiling limit of gratuity to an employee it is entirely rests upon the policy matter of the Government and until and unless the rule is amended by the state or any amendment is made in the original Central Act at the instance of the State Government the maximum limit of gratuity of amounting to Rs.10,00,000/- as per Payment of Gratuity(Amendment) Act, 2010 cannot be directed to be given to the petitioner by the State-respondents. So the matter requires decision of the State Government. There is no dispute on record that the present petitioner is governed by Rule-8 of the Pension Rules of 2009 as an employee of the state government in respect of payment of gratuity.

21. Situated thus, at this juncture invoking the jurisdiction under Article 226 of the Constitution of India, this court does not find any scope to direct the State

Government to make any policy decision in this regard. But it is open for the state government to consider the matter if the government so desires. In the light of the discussions made above, the present writ petition bears no merit and accordingly the same stands dismissed. No order is passed as to costs. However, the present petitioner may approach to the State department to consider his grievance if he is so advised. Further it is clarified that if any interest or anything remains pending in that case the petitioner shall be at liberty to claim for interest in view of the notification of vide No.F.8(13)Fin(G)/86 dated 08.04.1997 of the Finance Department to the appropriate authority and in that case the respective authority shall consider the matter of interest if it is found that the petitioner is actually entitled to get the same.

With this observation, this writ petition stands disposed of.

Pending application, if any, stands disposed of.

JUDGE