

**HIGH COURT OF TRIPURA  
AGARTALA**

**W.P.(C) No.802 of 2024**

**Sri Pradip Kumar Chowdhury,**  
Son of late Dinesh Chandra Chowdhury,  
Resident of border Rampur,  
P.O. Ramnagar-799002,  
Agartala, District: West Tripura

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

Versus

- 1. The State of Tripura ,**  
To be represented by the Secretary/Principal Secretary,  
Revenue Department, Govt. of Tripura,  
New Secretariat Building, New Capital Complex,  
Agartala, West Tripura, PIN: 799 001
- 2. The Secretary,**  
Department of Finance,  
Government of Tripura,  
New Secretariat Building, New Capital Complex,  
Agartala, West Tripura, PIN:799 010
- 3. The District Magistrate & Collector,**  
West Tripura,  
Office of the District Magistrate & Collector,  
Agartala, West Tripura, PIN: 799 001
- 4. The Accountant General,**  
Office of the Accountant General (A & E),  
Agartala, Tripura, PIN: 799 006
- 5. The Senior Accounts Officer,**  
Office of the Accountant General (A & E),  
Agartala, Tripura, PIN: 799 006

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

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For Petitioner(s)	:	Mr. Purusuttam Roy Barman, Senior Advocate Mr. Kawsik Nath, Adv.
For Respondent(s)	:	Mr. Mangal Debbarma, Addl. G.A. 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

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**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 41 years of service as rendered by the Petitioner and the last Basic pay of Rs.26,260/- and his Dearness Allowance of Rs.19,430/- 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) 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 quashing and cancelling the Order, dated, 13.05.2024, passed by the DM & Collector, West Tripura, i.e the Respondent No.3 herein,

(v) Make the rules absolute.

(vi) Call for records.

(vii) 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 Addl. G.A. Mr. D. Sharma appearing for the State-respondents and also heard Learned

Senior Counsel Mr. D. Bhattacharya assisted by Learned Counsel Mr. S. Saha appearing for the respondents No.4 and 5.

**03.** The gist of the petition filed by the petitioner is that the petitioner was temporarily appointed as Peon on Rs.60/- per month in the scale of pay of Rs.60-75/- along with other admissible allowances by the order dated 26.06.1974 issued by the District Magistrate & Collector. Thereafter the petitioner had joined in the post of Peon on 01.07.1974 by the order dated 24.07.1974 issued by the SDO, Sadar, West Tripura. After that the petitioner was promoted to officiate as Bill Clerk in the scale of Rs.240-Rs.440 (E.B after 8<sup>th</sup> and 15<sup>th</sup> stages) along with other allowances as admissible in the Sonamura Sub-Treasury. Later on, the petitioner got promotion to the post of Office Superintendent under the office of the District Collector & Magistrate, West Tripura. On attaining the age of superannuation, the petitioner retired from service w.e.f. 31.01.2016. At the time of retirement, the last basic pay of the petitioner was Rs.26,260/- and D.A. was Rs.19,430/- and petitioner was holding the post of Office Superintendent (Dist. Admn.) DM's office, West Tripura having in his credit about 41 years of service. Thereafter, vide memo dated 27.01.2016, issued by the Senior Deputy Magistrate, office of the DM & Collector, West Tripura, Agartala a statement was furnished showing the calculation of proposed pension & retirement gratuity in respect of the petitioner is reflected

as Rs.26,260/- with more than 41 years of service in his credit Rs.3,00,000/- has been paid on 27.01.2016. After 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. After retirement from his 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 31.01.2016, the respondents became liable to discharge their obligation of causing full and final payment of gratuity to the petitioner within next 30 days i.e positively by 01.03.2016 and this is a mandate of the Payment of Gratuity Act, 1972.

**04.** At the time of his 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.4,00,000/- 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.

**05.** 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.26,260/- and his DA was Rs.19,430/-. As such, he was entitled to 10,80,744/- as gratuity. The petitioner submitted one representation dated 13.08.2021 to the Director, Directorate of Youth Affairs & Sports, Agartala, West 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 paid 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)106/2022. 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.209 of 2022 against the judgment dated 06.09.2022 passed in WP(C)106 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. 209 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 01.05.2024 to the respondent No.3 i.e. the District Magistrate & Collector, West Tripura.

**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.4 and 5 the state-respondents have mentioned the following facts:

"That, in reply to para 1 to 10 of the writ petition, I say that the petitioner was retired on 31<sup>st</sup> January, 2016 as Office Superintendent (Annexure-5 to the writ petition) and at the time of retirement of the petitioner, the DCRG ceiling limit was Rs.4.00 lakhs as per the Tripura State Civil Services (Revised Pension) Rules 2009 (Annexure-11 to the writ petition). Thereafter, the Tripura State Civil Services (Revised Pension) Rules, 2017 has come into force w.e.f. 1<sup>st</sup> day of April, 2017 and enhanced the gratuity amount from Rs. 4 lakhs to Rs.10 lakhs and will be applicable only those who retired from service on or after 1<sup>st</sup> April, 2017. Since the petitioner has retired from service on 31<sup>st</sup> January, 2016 i.e., much before the date of enhancement of gratuity amount from Rs.4 lakhs to Rs.10 lakhs which has given effect from 1<sup>st</sup> day of April, 2017 and therefore, the enhanced gratuity amount is not applicable in the case of the petitioner.

That, in reply to para 11 to 40 of the writ petition, I Say that after retirement of the petitioner, the administrative department had scrutinized his entire service records and found that his last basic pay was Rs.26,260/- only and completed his Service about 41 years 07 months, accordingly, 3/4<sup>th</sup> of death-cum-retirement gratuity (DCRG) amounting to Rs.3 lakhs were sanctioned in favour of the petitioner, vide sanction Memo No.F.32(1-11)-DM/W/ESTT/5482 dated 27.01.2016, as per the prevailing ceiling limit of the gratuity i.e., @ Rs.4.00 lakhs as per TSCS (Revised Pension) Rules, 2009, based on his date of retirement on 31<sup>st</sup> January, 2016 and paid to the petitioner. Accordingly, after paying all pensionary benefits such as Gratuity, Leave Salary etc., service book of the petitioner has been sent to the office of the A/G, Tripura, proposing for granting of his pension. The remaining amount of Rs.01(one) lakh DCRG was sanctioned by the Accountant General (A & E) Tripura on 19.05.2016 and paid to the petitioner.

It is pertinent to mention here that unless and until the petitioner comes under the zone of ceiling limit of the gratuity of Rs.10.00 lakhs, he has no right to claim enhanced gratuity as the petitioner has retired from service from the date when the ceiling limit of gratuity amount of Rs.4.00 lakhs was in force and therefore, there is no logic in the case of the petitioner which the petitioner has described in his support of his claim in the writ petition. But the logic is, first the petitioner should prove that he was retired from service on or after 1<sup>st</sup> April, 2017 and thereafter, the question of entitlement of enhanced gratuity amount would come in favour of the petitioner or not. The answering respondents granted gratuity in favour of the petitioner considering the in force rules in the State, so there is nothing illegality on the part of the answering respondents."

**11.** The respondents No.4 and 5 also have submitted separate counter-affidavit. In para No.8-12 to the counter-affidavit the said respondents No.4 and 5 have made the following assertions:

"8. That, with respect to Paragraphs No.7 to 14, 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.15 and 16, I say that the Gratuity has to be calculated i.e.  $\text{Rs.}29,950 \times 66/4 = \text{Rs.}4,94,175/-$  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.17, 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.18 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 31.01.2017 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 31.01.2016 and this present writ petition is the 3<sup>rd</sup> round litigation because earlier this present petitioner filed another writ petition

before this High Court bearing No.WP(C)106 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 to 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 Office Superintendent 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 provisions 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 31.01.2016. Now for the sake of convenience, I would like to mention herein below 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.

**18.** The state-respondents already in their counter-affidavit stated that the petitioner was given an amount of Rs.4,33,290/- 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 31.01.2016 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.”

19. 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.

**20.** 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 respondents be given to the present petitioner. 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 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**

