
Babul Ranjan Singha Vs Tripura Road Transport Corporation and Others

Writ Petition (C) No"s. 159, 280 and 281 of 2012

Court: Gauhati High Court

Date of Decision: March 13, 2013

Acts Referred:

Payment of Gratuity Act, 1972 " Section 7(3), 7(3A)

Citation: (2013) 139 FLR 163 : (2013) 3 LLN 628 : (2013) LLR 817

Hon'ble Judges: S. Talapatra, J

Bench: Single Bench

Advocate: R. Datta, for the Appellant; P. Datta, Advocate for Respondents No. 1 and 2 and Ms. A.S. Lodh, Addl. Govt. Advocate for Respondents No. 3 and 4, for the Respondent

Judgement

S. Talapatra, J.

Heard Mr. R. Datta, learned counsel appearing for the petitioner as well as Mr. P. Datta, learned counsel appearing for

the respondent Nos. 1 and 2 and Ms. A.S. Lodh, learned Addl. Govt. Advocate for the respondent Nos. 3 and 4. All these writ petitions are

attended by the similar set of facts and an identical question of law and for that reason all these writ petitions are taken up at this stage considering

the urgency attached to the subject matter for disposal by a common judgment.

2. Admittedly, the writ petitioners who are the former employees of the respondent No. 1, have retired from service on various dates but their

retiral benefits, the gratuity in particular was not paid in terms of section 7(3) of the Payment of Gratuity Act, 1972, which provides that the

employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person to whom the gratuity is

payable.

3. The gratuity is indisputably payable on the day of retirement of an employee, but in these cases such amount was not paid on the day of

retirement. However, section 7(3A) of the Payment of Gratuity Act, 1972 provides the penal interest in the following terms:

(3A). If the amount of gratuity payable under sub-section (3) is not paid by the employer within the period specified in sub-section (3) the

employer shall pay, from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rate, not exceeding

the rate notified by the Central Government from time to time for repayment of long term deposits, as that Government may, by notification specify:

Provided that no such interest shall be payable if the delay in the payment is due to the fault of the employee and the employer has obtained

permission in writing from the Controlling Authority for the delayed payment on this ground.

4. Mr. R. Datta, learned counsel appearing for the petitioners in all these writ petition stated that the delay in the payment occurred for the fault

entirely attributable to the employer.

5. From the other side, Mr. P. Datta, learned counsel appearing for the respondent Nos. 1 and 2 submitted by virtue of the counter affidavit filed in

W.P. (C) No. 281/2012 that since the Government in the concerned Department, the Transport Department, did not release the fund, the gratuity

could not be paid in time. He has referred the communication addressed to the Joint Secretary to the Govt. of. Tripura, Transport Department

dated 30.6.2010 and 18.10.2010 (Annexures A and B respectively to the counter-affidavit). From a bare reading of those communications it

appears that the respondent Corporation had been facing serious stringency of the fund and it has been further stated in the counter affidavit that

the respondent Nos. 3 and 4 as did not release the fund in time, the Corporation respondent could make payment of gratuity in time.

6. Be that as it may, such hardship or stringency would not absolve the Corporation respondent from its liability as saddled by the law. The apex

court held consistently that hardship is no ground for depriving an employee from his legitimate due.

7. Ms. A.S. Lodh, learned Addl. Govt. Advocate appearing for the respondent Nos. 3 and 4 prayed for time for filing the counter-affidavit, but

when this court refused to accommodate, Ms. Lodh, learned Addl. Govt. Advocate for the state produced a written instruction, wherefrom it is

availed that:

So, the question of illegal dragging for prolonged period in payment of gratuity on behalf of Respondent Nos. 3 and 4 does not arise. Though

sanction of gratuity has been made by Finance Deptt. on regular basis, one time full grant could not be given due to non-availability of fund. So, the

retired employees placed in the later Sl. No. of the list could get their gratuity amount sanctioned at some delayed time. On sanction of the Gratuity

by the Finance Deptt., Transport Deptt. Immediately placed the amount at the disposal of the TRTC for payment of the same to the retired

employees.

From this written instruction, it is clear that for non-release of the fund by the respondent Nos. 3 and 4 at some point of time, the Corporation-

respondent could not pay the gratuity in due course.

8. Situated thus, this court has no other alternative but to direct the respondent No. 1, Tripura Road Transport Corporation and the respondent

No. 2, the Managing Director/General Manager, TRTC to pay with interest @ 8% per annum on the gratuity from the date of retirement of the

writ petitioners till the date of payment of the gratuity within a period of 4 (four) months from today else the said interest would enhance to 8% per

annum. With this observation and direction all these writ petitions stand allowed and accordingly disposed of. There shall be no order as to costs in

the fact and circumstances of the case.

A copy of this order be furnished to Mr. P. Datta, learned counsel for the respondent Nos. 1 and 2 for doing the needful.