(2016) 02 TP CK 0013

In the Tripura High Court

Case No : WP(C) No. 431 of 2015

Nikhil Bhowmik APPELLANT

Vs

The State of Tripura and Others RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:
Payment of Gratuity Act, 1972 — Section 5

Citation : (2016) 02 TP CK 0013

Hon'ble Judges : Deepak Gupta, C.J. and S. Talapatra, J.

Bench : Division Bench

Advocate : P. Roy Barman and Samarjit Bhattacharji, Advocates, for the Appellant; A.S. Lodh, Addl. G.A., for the Respondent

Final Decision : Disposed off

Judgement

1. The petitioner is an employee of the Tripura Small Industries Corporation Ltd. (hereinafter referred to as "TSICL"). He had retired on attaining the age of superannuation on 31.05.2015. His grievance is that he has not been paid his full gratuity under the Payment of Gratuity Act, 1972 within thirty days of his retirement from service. It is the case of the petitioner that his gratuity has been limited to a maximum of Rs. 3,50,000/- whereas under law w.e.f. 2010 the maximum amount of gratuity payable has been increased to Rs. 10,00,000/-.

2. On behalf of the respondent-TSICL one of the issues raised is that the TSICL is running in losses and it is bound by the directions of the State Government and since the State Government has not directed it to give gratuity over and above Rs. 3,50,000/-, it cannot make payment above this amount. Sri Saha, learned counsel appearing for the TSICL also submits that the TSICL has entered into an agreement with the Life Insurance Corporation of India (hereinafter referred to as "LIC") for payment of gratuity and it is the duty of the LIC to pay the gratuity. He prays that the LIC may be made a party to the petition.

3. The issue which arises in this case is covered by the judgment of this Court

delivered in WP(C) 247 of 2013 [Sri Subhas Chandra Saha v. The State of Tripura and Ors.] wherein this Court has clearly held that even the State of Tripura has no power to limit the maximum amount of gratuity to less than Rs. 10,00,000/-. We have clearly held that the State can only exempt any Corporation or Company from the purview of the Payment of Gratuity Act, 1972 if it ensures that there is some other retiral scheme which is more beneficial to the employees than the provisions of the Payment of Gratuity Act, 1972. Therefore, the minimum benefit which an employee has to get is that which is available under the provisions of Payment of Gratuity Act, 1972. We have in the said case further held as follows:

"11. Next comes the question, as to whether the State has any power to exempt any establishment which falls within the purview of the Payment of Gratuity Act. Here reference may be made to Section 5 of the Payment of Gratuity Act, 1972, which reads as follows:

"5. Power to exempt.--(1) The appropriate Government may, by notification, and subject to such conditions as may be specified in the notification, exempt any establishment, factory, mine, oilfield, plantation, port, railway company or shop to which this Act applies from the operation of the provisions of this Act if, in the opinion of the appropriate Government, the employees in such establishment factory, mine, oilfield, plantation, port, railway company or shop are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act."

12. A bare reading of Section 5 makes it absolutely clear that the State can exempt any establishment etc. from the provisions of the Act only after the State is satisfied that the employees of such establishment etc. are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under the Act. Therefore, every employee who is covered under the Act must get the amount which is payable under the Act. However, if an employer provides such terms of employment which are more beneficial to the employees than the provisions of the Payment of Gratuity Act then only can the State Government exempt such establishment from the rigours of Payment of Gratuity Act. This is not the case here."

In view of the above discussion, we have no hesitation in holding that the petitioner is entitled to payment of gratuity in accordance with the Payment of Gratuity Act, 1972 and the maximum gratuity cannot be limited to Rs. 3,50,000/- but the maximum gratuity payable would be Rs. 10,00,000/- since the petitioner retired after 2010. Therefore, the respondent-TSICL is required to calculate the gratuity payable to the petitioner by taking into consideration his length of service after deducting the amount already paid to the petitioner, the balance amount shall be paid to the petitioner within six months from today.

4. It has been stated by Sri Saha that the gratuity should be paid by the LIC. That is a contract which has been entered into between the TSICL and the LIC.

The liability to make payment of gratuity is that of the TSICL under the Payment of Gratuity Act, 1972. Therefore, we direct that in case the TSICL feels that this amount has to be paid by the LIC then it must immediately, within 15 days of the receipt of this order, convey the same to the LIC and if under the terms of the agreement entered into between the TSICL and the LIC, the case of the petitioner is covered and is to be paid by the LIC then the LIC shall deposit the gratuity with the TSICL. If some extra premium has to be paid on this count then the TSICL shall ensure that this premium is deposited within a period of three months from today so that the payment of gratuity is made to the petitioner within six months from today. In case the payment of gratuity is not made within six months from today then the petitioner, on the amount of gratuity, shall also be entitled to interest @ 9% per annum from the date of his retirement till payment of the same.

5. We have also been informed that in some cases the LIC has already calculated the gratuity by taking into account the upper limit of Rs. 10,00,000/- and has handed over the money to the TSICL but the TSICL has not released the amount over and above Rs. 3,50,000/- on the ground that no instructions have been received from the State Government. In all these cases, the TSICL shall pay interest @ 12% per annum from the date on which the amount was handed over to the TSICL by the LIC.

With the above observations and directions, this writ petition is disposed of, in the aforesaid terms.