TRHC010021802025

HIGH COURT OF TRIPURA
AGARTALA

W.A. No.20 of 2026

1. The State of Tripura, To be represented by the Principal Secretary, Department of Industries & Commerce, Government of Tripura, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN-799010.

2. Tripura Horticulture Corporation Ltd., (A Govt. of Tripura Undertaking), To be represented by the Managing Director, Tripura Horticulture Corporation Ltd., Arundhutinagar, Agartala, West Tripura, PIN-799003.

3. The Managing Director, Tripura Horticulture Corporation Ltd., Arundhutinagar, Agartala, West Tripura, PIN-799003, P.S.-New Capital Complex, Agartala, West Tripura, PIN-799010.

4. The Secretary, Department of Finance, Government of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, PIN-799010.

…… Appellant(s).

V E R S U S

Sri Ratan Kumar Biswas, Aged 63 years, Son of Late Ramesh Chandra Biswas, Resident of Barjala, Ward No.1, P.O.-Barjala, Agartala, West Tripura, PIN-799002.

……Respondent(s).

For Appellant(s) : Mr. Dipankar Sarma, Addl. G.A.

For Respondent(s) : Mr. Purusuttam Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate,
Mr. Kawsik Nath, Advocate.

HON'BLE THE CHIEF JUSTICE MR. M.S. RAMACHANDRA RAO
HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

CAV reserved on : **10.11.2026**.

Judgment delivered on : **18.11.2026**.

Whether fit for reporting : **YES**.

JUDGMENT & ORDER

(M.S. Ramachandra Rao, C.J.)

Heard Mr. Dipankar Sarma, Addl. Government Advocate appearing for the State-appellants and Mr. Purusuttam Roy Barman, learned

TRHC010021802025

senior counsel assisted by Mr. Samarjit Bhattacharjee, counsel appearing for the respondent.

2. In this Writ Appeal, the appellants have challenged the judgment dt.10.11.2025 of the learned Single Judge in W.P.(C) No.682 of 2023.

3. The respondent no.1 had joined the service of the Tripura Horticulture Corporation Limited (Appellant no.2) (for short 'THCL') as a Driver on 17.11.1988 and retired on 31.8.2021 on attaining the age of superannuation.

4. He contended that THCL is a Govt. of Tripura Undertaking and is a "State" within meaning of Art.12 of Constitution of India.

5. Thereupon he claimed that as per Rule 35(2) of the Tripura State Civil Services (Leave rules) 1986 he became entitled to Leave Encashment. He also claimed Gratuity of Rs.20,00,000/- as per Section 4(3) of the Payment of Gratuity Act,1972 from the appellants stating that he had worked for 33 years in THCL. He also claimed interest for delay in payment of Gratuity @ 9% p.a.

6. When he filed W.P.(C) No.840/2021 seeking these benefits, it was disposed of by this High Court on 10.3.2023 with a direction to respondents to consider his claims as per law.

7. The respondent no.1 then gave a representation dt.27.3.2023 enclosing the order in W.P.(C) No.840 of 2021, but the THCL did not take any action. So he filed Cont.Cas(C) No.131/2023.

8. On 25.8.2023, this representation dt.27.3.2023 was disposed of by the Managing Director of THCL (Appellant no.3) stating that vide memo dt.5.11.1988, respondent no.1 had been appointed temporarily only on *ad hoc*

TRHC010021802025

basis for a period of 3 months upto February, 1989; that his services were extended twice upto February, 1990 and February, 1992; and thereafter no records relating to continuation of his services or regularisation thereof were available. It was stated that on date of retirement also he was an *ad hoc* employee. He was asked to submit proof of service regularisation as well as legitimacy for getting Gratuity and Leave Encashment.

8A. The Contempt Case was therefore closed on 26.9.2023 in view of passing of this order by the Appellant no.3.

9. Later vide a memo dt.20.9.2023, the appellant no.3 rejected claim of respondent no.1 on ground that he did not furnish any documents relating to regularisation of his service and entitlement to Gratuity and Leave Encashment. It is also stated that that THCL has no rule/policy regarding entitlement of Leave Encashment benefits towards its employees.

W.P.(C) No.682 of 2023 and the impugned judgment dt.10.11.2025 therein

10. The respondent no.1 then filed W.P.(C) No.682 of 2023 challenging the said order dt.20.9.2023 of appellant no.3.

11. The appellants filed a counter affidavit reiterating their stand.

12. The learned Single Judge allowed the Writ Petition. He held that the appellants had appointed the respondent no.1 after following all official formalities on 16.11.1988, and during his service had even granted CAS and ACP benefits, though they were aware that he was an *ad hoc* employee. So the appellants knowing fully well or intentionally continued him in service for 33 years on *ad hoc* basis, that the THCL is a “State” within Art.12 of Constitution of India, and so he is entitled to both Leave Encashment and Gratuity.

The Writ Appeal

13. Challenging the said judgment of the learned Single Judge, this Writ Appeal has been filed by the Appellants.

14. The counsel for the Appellants contended that the judgment of the learned Single Judge is erroneous and that an *ad hoc* employee cannot be granted benefit of Leave Encashment and Gratuity. He also contended that such benefits cannot be granted to respondent no.1 in the absence of Rules framed by THCL in that regard.

15. The counsel for respondent no.1 supported the judgment of the learned Single Judge and relied on Division Bench decisions of this court in ***State of Tripura v. Bikash Roy***[1] and in ***Basanta Sen v.State of Tripura and others***[2]**.**

16. In ***Basanat Sen*** (2 supra), a Division bench of this Court (to which the one of us i.e., Chief Justice was a party) held that having appointed the appellant to the post of Panchayat Extension Officer on 14.09.1989, and having continued him in service till 31.08.2017, for almost 28 years, it is not permissible for the respondents to contend that the appellant's appointment as Panchayat Extension Officer is only *temporary or ad hoc*. It held:

> *"As held by the Supreme Court in* ***Rudra Kumar Sain & Ors. Vs. Union of India & Ors***[3]***.,*** *a person, who possesses the requisite qualification for being appointed a particular post and continues in the post for a fairly long period, cannot be held to be holder of an ad hoc post. So the respondents are precluded from contending that the appellant's appointment was only temporary or ad hoc and so he was not entitled to get regularized.*

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[1] Judgment dt.22.4.2025 in W.A No. 01 of 2024 (DB)
[2] Judgment dt.28.1.2026 in W.A.No.180 of 2022 (DB).
[3] (2000) 8 SCC 25

In ***State of Gujrat & Ors. Vs. Talsibhai Dhanjibhai Patel***[4] ***[SLP(C) 1109 of 2022]*** *the Supreme Court held as under:-*

"It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit. The State cannot be permitted to take the benefit of its own wrong. To take the services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years continuous service shall not be eligible for pension, is nothing but unreasonable. As a welfare State, the State as such ought not to have taken such a stand.

In the present case, the High court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years service."

Thus, the Supreme Court found fault with the State for taking the services of the respondent therein as an ad hoc employee for thirty years and then denying to the said respondent pensionary benefits. It held that the State cannot be permitted to take benefit of its own wrong. The same logic applies in the instant case as well.

Similarly, in ***Union of India Rep by Government of Puducherry & Anr. Vs. K Velajagan & Ors***[5]***. [SLP Civil No.2868 of 2018]*** *dated 04.02.2025, the Supreme Court directed regularization of persons working from 2005 as lecturers though the UPSC had rejected the request for regularization. It upheld the decision of the High Court which directed regularization of the respondents therein without any involvement of the UPSC.*

We respectfully follow the above decisions and hold that the appellant was entitled to relief of regularization from the date of his

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[4] 2022 SCC ONLINE SC 2004
[5] 2025 SCC ONLINE SC 837

appointment for the limited purpose to enable him to get retirement benefits."

17. We respectfully follow the said decisions of the Supreme Court referred to in ***Basanta Sen (2 supra),*** and hold that the respondent no.1 cannot be treated as a temporary and *ad hoc* employee after his services were utilised from 17.11.1988 till 31.8.2021, and for purposes of retiral benefits he has to be treated as if he is a regular employee. In fact by giving him CAS and ACP benefits while in service, the appellants are deemed to have treated him as a regular employee though his appointment letter stated that his appointment was *ad hoc*.

18. The respondent no.1 would therefore undoubtedly come within the definition of the term 'employee' in Section 2 (e) of the Payment of Gratuity Act, 1972. The THCL, as per its Memorandum of Association has one of its main objects the acquisition on lease, transfer or otherwise from the State Government orchards/plantations and thus fulfils the character of the term 'employer' in Section 2(f) (iii) of the said Act. So under section 4(1) (a) on completion of 5 years of service the respondent no.1 became entitled to Gratuity at time of superannuation. The amount of Gratuity payable under section 4(3) has been fixed at Rs.20 lakhs by S.O.420 (E) dt.29.3.2018 by the Central Government.

19. Admittedly the THCL in the Minutes of its Board Meeting dt.16.7.2024 recorded that it had paid Gratuity to 4 orchard workers Sri Amar Ch. Saha, (Petitioner in WP(C) No.310 of 2021), Sri Phani Bhushan Roy, (Petitioner in WP(C) No.306 of 2021), Sri Churamoni Malakar (Petitioner in W.P.(C).No.307 of 2021), Sri Sachindra Majumder (Petitioner in WP(C)

No.308 of 2021) and Sri Sudhangshu Kr. Ghosh (Petitioner in WP(C) No.309 of 2021) vide Memo No.F.2(35)/THCL/PART/2022-5294-5306 dt.9.2.2023 in view of judgment dt.20.1.2022 in WP(C) No.306, 309 and 310 of 2021. Having granted Gratuity to these persons the appellant no.2 cannot discriminate against the respondent no.1 and plead that he is not entitled to payment of Gratuity.

20. On parity with the above 4 persons, the respondent No.1 is also entitled to payment of Gratuity of Rs.20 lakhs with interest at 7 % p.a. from the date on which it should have been paid till actual payment as per the Payment of Gratuity Act,1972.

21. Admittedly the respondent no.1 is an employee of THCL only and not the State Government. Leave Encashment provision is not there for employees of THCL as per the Minutes dt.9.2.2023 of the Board of THCL. So the respondent no.1 cannot claim Leave Encashment benefit.

22. For the aforesaid reasons, the Writ Appeal is partly allowed and to the extent the learned Single Judge directed payment of Leave Encashment benefit, his judgment is set aside. It is however affirmed as regards liability of THCL to pay Gratuity to respondent no.1 is concerned. Therefore, the appellants are directed to pay Gratuity of Rs.20 lakhs with interest at 7 % p.a. from the date on which it should have been paid till actual payment of the same. The appellants shall pay the above amount as also costs of Rs.10,000/- to the respondent no.1 within 8 weeks.

Pending application(s), if any, also stands disposed of.

(S. DATTA PURKAYASTHA, J) **(M.S. RAMACHANDRA RAO, CJ)**

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