

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 180 of 2021

Sri Swapan Saha

---Petitioner(s)

Versus

The State of Tripura and 8 Others

---Respondent(s)

For Petitioner(s)	: Mr. K. Chakraborty, Adv.
For Respondent(s)	: Mr. H. Sarkar, Adv.
Date of hearing and delivery of judgment and order	: 08.05.2023
Whether fit for reporting	: No.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

This is a petition under Article 226 of the Constitution of India for enforcement of the Constitutional rights of the petitioner, guaranteed under Articles 14, 16 & 300A of the Constitution of India, and his Statutory rights.

[2] The brief case of the petitioner is that the petitioner had initially joined the post of Stenographer, under the GA (P&T) Department on 06.09.1988. Thereafter, on 21.09.2007 the petitioner was promoted to the post of PA-I. On attaining the age of superannuation, the petitioner retired from service on 31.03.2019. Even though, the last pay drawn by the petitioner, was Rs.83,600/- but while finalizing his pension, most illegally & arbitrarily, on the purported ground of wrong fixation, his last pay was reduced to Rs.81,200/- on 20.05.2019. On 26.07.2019, a sum of Rs.2,13,939/- out of the gratuity amount of the petitioner, amounting to Rs.10 lacs was recovered by the respondents. On 27.05.2019, a PPO was issued in favor of one junior of the petitioner namely Sri Tapan Dhar thereby recording his last pay as Rs.87,100/-. Being aggrieved therefrom, on 30.07.2019, 06.12.2019, 16.11.2020 & 14.12.2020, the petitioner submitted a host of representatives, before the respondents Nos. 8 & 9 seeking parity of pay with his said junior, which was negated by a letter dated 17.11.2020 by the respondents. That, the recovery of Rs.2,13,939/- from the gratuity amount

of the petitioner, and further non-fixation of his last pay in parity with his junior namely Sri Tapan Dhar, have resulted in violation of the Constitutional rights of the petitioner, guaranteed under Articles 14, 16 & 300 A of the Constitution of India.

[3] Being aggrieved, the petitioner has approached this court for the following reliefs:-

(i) Issue rule, calling upon the respondents and each one of them, to show cause as to why a Writ in the nature of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to revoke/rescind the impugned letter dated 20.05.2019, the impugned PPOs dated 20.05.2019 & 26.07.2019 (insofar as it relates to reduced fixation of pay & recovery of gratuity amount of the petitioner) and the impugned letter dated 17.11.2020 and thereupon direct them to refund the recovered amount of gratuity, amounting to Rs.2,13,939/- in favour of the petitioner, and further to fix the last pay of the petitioner as Rs.87,100/- i.e. in parity with his junior namely Sri Tapan Dhar [PA-I (retired) with effect from the date of his retirement or from the date of such anomaly arose, and accordingly, modify the PPO of the petitioner, and release the consequential benefits alongwith arrears thereof, in favour of the petitioner.

(ii) Call for records, appertaining to this Writ petition.

[4] Heard Mr. K. Chakraborty, learned counsel appearing for the petitioner as well as Mr. H. Sarkar, learned counsel appearing for the respondents.

[5] Today when the case is called, the learned counsel appearing for the respondents has filed a counter affidavit in pursuance of the order dated 02.05.2023 passed by this court. The same is taken on record. The counsel for the respondents has duly served a copy of the counter affidavit to the counsel for the petitioner.

[6] In view of said submission, without expressing any opinion on the merits of the case this present writ petition is disposed of with the following observation. The respondent shall refrain from recovering the amount of gratuity amounting to Rs.2,13,939/- in the light of the judgment in **State of Punjab and Others vs. Rafiq Masih (White Washer) and Others** reported in **(2015) 4 SCC 334**.

[7] At this juncture the counsel appearing for the respondents in all fairness submits that he has already taken up the matter with the respondents and on this issue regarding the settled principle and there cannot be any recovery

from the petitioner as the settled principle has been adopted by the Hon'ble Supreme Court. Accordingly, the respondents have initiated the proceedings for refunding the amount of Rs.2,13,939/- to the petitioner.

[8] Insofar as the fixing up of the pension of one Sri Tapan Dhar, who is junior to the petitioner, is concerned, it is submitted by the respondent counsel the pension of Mr. Tapan Dhar is incorrect and the same has been under consideration for reviewing and release of pension and re-fixation of Sri Tapan Dhar.

[9] The respondents are also directed to consider with regard to the payment of interest @ the rate of 6% in accordance with law from the amount of the petitioner of gratuity duly recovered in 2019 by the respondents. The same shall be considered and communicated to the petitioner within a period of two months from the date of receipt of copy of this order.

[10] It is needless to mention here that, in future, if the petitioner is aggrieved by any order passed by the respondents the petitioner will be liberty to approach before this court challenging the same.

JUDGE

