

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.303 OF 2022**

Sri Dipak Baidya

..... **Petitioner(s)**

Vs.

The State of Tripura and ors.

..... **Respondent(s)**

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. K. Nath, Advocate.

For the Respondent(s) : Mr. A.K. Pal, Advocate.

Date of hearing and delivery of
Judgment & Order : 27.04.2023.

Whether fit for reporting : YES/NO.

HON'BLE MR JUSTICE T. AMARNATH GOUD

JUDGMENT AND ORDER(ORAL)

This present writ petition has been filed under Article 226 of the Constitution of India. The brief fact of the case of the petitioner herein is that the petitioner earlier filed W.P(C) No.1428/2019, before this Court. This Court vide Order dated, 10.01.2020 disposed of the said writ petition directing the respondents to release gratuity, leave encashment benefit, and arrear of pay matrix to the petitioner. In releasing those benefits to the petitioner, the respondents caused a deduction of Rs.6,30,415/- from the gratuity & leave encashment benefit of the petitioner. According to the petitioner, the respondents have

not properly and accurately determined and calculated the gratuity, leave encashment benefit, and arrear of pay matrix of the petitioner. The respondents have also not paid interest in terms of the aforesaid Order of this Court. Against the aforesaid arbitrary action of the respondents, the petitioner has again filed another WP(C) No.270 of 2020 challenging the recovery of Rs.6,31,415/- from his gratuity amount and for interest for deferred payment of gratuity. Thereafter, this Court directed the respondents to explain the reason for the recovery of Rs.6,31,415/- in writing and to hand over the same to the petitioner along with documents so that he can pursue and examine the matter. The respondents could not justify the same. Hence, the present writ petition seeking the following reliefs:-

" i. 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 sanction memo dated 06.03.2020, issued by the Chief Executive Officer, TKVIB so far recovery of Rs.6,31,415/- from the gratuity and leave salary of the petitioner is concerned.

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 quashing and cancelling the letter, dated 23.11.2021, issued by the Chief Executive Officer, TKVIB.

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 quashing and cancelling the Memorandum, dated 11.05.2020, issued by the Chief Executive Officer, TKVIB.

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 directing the Respondents to pay the rest amount of gratuity after adjusting Rs.12,62,769/- already paid with 10% on the total amount of gratuity w.e.f.

01.08.2019 till 06.03.2020, thereafter on the rest amount of gratuity till actual payment is made.

v. 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 pay leave encashment benefit Rs.12,62,769/- already paid with 10% on the total amount of gratuity w.e.f. 01.08.2019 till 06.03.2020, thereafter on the rest amount of gratuity till actual payment is made.

vi. 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 pay the petitioner actual amount of pay matrix with interest in terms of the Order, dated 10.01.2020 passed by the Hon'ble High Court in WP(C) No.1428/2019 till 06.03.2020 and thereafter on the rest amount from 06.03.2020 till actual payment is made.

vii. 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 refund Rs.6,31,415/- with 7.5% interest.

viii. Make the rules absolute.

ix. Call for records.

x. Pass any further order/orders as this Hon'ble High Court considered fit and proper."

2. Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner as well as Mr. A.K. Pal, learned counsel appearing for respondents No.2, 3 & 4.

3. Mr. P. Roy Barman, learned Sr. counsel submits that the respondents have not caused the full and final payment of gratuity to the petitioner and the delay so caused is not attributable to the petitioners and the respondents are wholly and squarely liable for such inordinate and unreasonable delay. Learned Sr. counsel further submitted that during the service tenure, there was no whisper or murmur, after the retirement of his client, when the question of payment of gratuity came up, then the respondents claim that access payment is there and

they recovered impugned amount from his client. Learned Sr. counsel submits that in view of the Payment of Gratuity Act and in view of the Judgment of the Supreme Court, such recovery is not permissible.

4. On the other hand, Mr. A.K. Pal, learned counsel appearing for respondents No.2, 3, and 4 submits that deduction as made the respondents submits that the petitioner has withdrawn the excess amount, and the deduction is made as per law.

5. Heard both sides and perused the evidence on record. It is seen from the record that the decision to deduct the impugned amount is a unilateral decision of the respondents. No show cause notice was made to the petitioner herein, no demand has been raised, which is violative to the principle of natural justice. Accordingly, the decision of the respondents to deduct/withhold the said Rs.6,31,415/- from the gratuity and leave salary of the petitioner is set aside.

6. However, in the event the respondents find that the petitioner is liable to pay the said amount, they are liable to proceed with the said recovery in accordance with the law.

7. With the above observation and direction, this present writ allowed and thus disposed of. As a sequel, stay if

any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

