

HIGH COURT OF TRIPURA

A_G_A_R_T_A_L_A

WA.No.82 of 2016

1. The State of Tripura, represented by the Principal Secretary, Finance Department, Government of Tripura, Civil Secretariat, P.O. Kunjaban, Agartala, West Tripura.

..... Respondent-appellant.

-VERSUS-

1. Tripura Government Employees Federation, having its Head Office at Post Office Chowmuhani, P.S. West Agartala, P.O. Agartala, West Tripura, represented by Sri Shishirendra Saha, Secretary General.

..... Petitioner-respondent

B_E_F_O_R_E

HON'BLE THE CHIEF JUSTICE [ACTING]
HON'BLE MR. JUSTICE ARINDAM LODH

For Appellant(s)	:	Mr. S. S. Dey, Advocate General. Ms. A. Chakraborty, Advocate.
For Respondent(s)	:	None.
Whether fit for reporting	:	YES

Judgment and order dated 15th March, 2023

JUDGMENT & ORDER

When the case is called, Mr. S. S. Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel entered appearance on behalf of the appellant and submitted that despite issuance of notices, there is no representation for the respondents and the matter pertains to 2016. In view of above, today the matter has been taken for final disposal as the matter was listed in the caption of final hearing.

[2] This appeal has been filed against the judgment and order passed by this Court in WP(C) No.268 of 2011 dated 28.04.2016. This judgment is passed answering a writ petition filed by "Tripura Government Employees Federation" represented by its General Secretary inter alia praying for mandamus or similar direction be issued to the respondent State to fulfill its

commitments and maintain the mandamus issued by this Court in CR. No.525 of 1995 by clearing the arrears of 36% (12+24) to reach the central rate and then to continue the parity.

[3] The grievance as canvassed in this writ appeal by the appellant is that the Tripura Government Employees Federation an association of Government Employees filed the present writ petition for issuance of an appropriate mandamus to the state respondents to pay Dearness Allowance to reach the Central Rate of DA and then to continue the parity. According to the writ petitioner there is a mandamus in earlier writ petition being C.R. No.525 of 1995 dated 07.02.1996. At the time of filing the writ petition there was a gap of 32% DA to reach the central rate. The State respondents contested the writ petition and contended that there was no mandamus to pay the DA at a central rate in all time to come.

[4] There was no policy of payment of DA at a central rate. However, the State Government issued a clarificatory memorandum to the effect that DA would be paid at the rate declared by the State Government from time to time. This Court passed judgment directing the State respondents to calculate DA at the rate of the central Government till 27-08-2011 and released the arrear DA by three installments, one each on expiry of every six month commencing from 01.07.2016. The State Government may, for purpose of overcoming difficulty credit a part only of the arrear of DA in the GPF of the concerned employee declaring moratorium for a maximum period of three years.

[5] Learned Single Judge, after hearing the parties and perusal of the material evidence on record, has observed as under:

“But when by operation of the policy, entitlement of DA becomes due, it becomes debt in nature and it has been held by the apex court in State of Madhya Pradesh versus G. C. Mandawar that unlike England, in our country such ‘debt’ due to be discharged by the Government could be attached. When the State cannot be compelled by mandamus to grant DA/DR but when entitlement accrues by way of the policy and the same is not paid, mandamus can be issued. While issuing such mandamus the court may take a pragmatic approach. For certainty of the rate, entitlement

of the State Government employees cannot be denied by the respondent. Even there cannot be any amount of debate that this financial relief [DA/DR] is granted to the employees or the pensioners to adjust the inflationary effects or to preserve actual wage value. Its impounding for uncertain and unlimited period cannot be terms as fair labour practice.

With this observation and direction this writ petition is allowed to the extent as indicated above. There shall be no order as to the costs.”

[6] Being aggrieved by and dissatisfied with the observation made above by the learned Single Judge, the appellant has preferred this present appeal before this Court.

[7] Mr. S. S. Deb, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel appearing for the appellant has submitted that the learned Single Judge wrongly reached the conclusion that before 27.08.2011 the State government was under an obligation to release the DA/DR at the central rate in the same manner as it has been recommended by the PRC for release of 16% arrear DA on the basis of central rate. In fact the PRC recommended to the State government to consider whether 16% arrear DA could be released in favour of the State government employees as a one-time measure, nothing more. The learned Single Judge held that as a policy matter the State government was under an obligation to release DA/DR at the central rate prior to memorandum dated 27.08.2011.

[8] It has further been held by the learned Single Judge that the State government employees were entitled to DA at the central rate till an appropriate method was adopted by the State government since there has been no policy change before memorandum dated 27.08.2011. The learned Single Judge should have considered that by memorandum dated 05.05.2009 it was declared that DA as admissible to the State government employees would be released w.e.f. 01.01.2009 and it was further declared that accordingly, Governor was pleased to decide 16% DA shall be released to the employees appointed in regular scale of pay to services and posts in connection with the State w.e.f. 1st January, 2009. Drawal and disbursement of the released DA shall be regulated under Rule-16(2) of the TSCS (Revised Pay) Rules, 2009.

[9] Mr. Dey, learned A.G. has further contended that the petitioner association failed to indicate any enforceable legal right in favour of the State government employees to claim DA at the same rate and periodicity as it made available by the central government in favour of its employees from time to time except an unfounded assertion based on an erroneous assumption that the earlier judgment dated 07.02.1996 delivered in Civil Rule-525 of 1995 mandates the respondents in perpetuity to continue the parity of the rate of the DA with the central government and such perpetual mandamus having been found non-existent the writ petition squarely deserved to be dismissed for want of any lawful cause of action.

[10] Though the learned Single Judge was convinced that by the earlier judgment dated 07.02.1996 no mandamus in perpetuity had been issued for maintaining the parity of the central rate of DA or its periodicity and hence on that ground no relief can be granted in favour of the writ petitioner. The learned Single Judge went beyond the pleadings and the case made out by the writ petitioner to come to an unsustainable conclusion to the effect that the State government's policy of releasing DA for its employees remained unchanged though the earlier policy decision taken in the year 1988 was found to be merely confined to the recommendation of the 3rd Tripura Pay Commission.

[11] He has submitted that the learned Single Judge has arrived at a glaringly erroneous finding that no records had been placed before this Court that the policy of releasing DA at the rate of central government employees has been changed earlier before the memorandum dated 27.08.2011 or there had been any policy decision to change the policy as declared by the Council of Ministers by the decision taken on 26.12.1996, since as by way of annexure R/9 annexed to the counter affidavit the decision of the State government taken on 26.12.1998 at the time of implementation of the recommendation of the 4th Tripura Pay Commission was formally brought on records of this Court by which it was clearly notified that the DA may be released on pattern of the government of India depending on availability of fund.

[12] It was pointed out to the learned Single Judge on behalf of the State respondents that not only the petitioner association had not challenged the new policy about grant of DA in favour of its employees depending upon the availability of its financial resources, but the petitioner association was guilty of deliberate suppression of this material fact in its writ petition while claiming equal rate of DA compared with that available to the central government employees on the basis of the mandamus issued earlier.

[13] Mr. Dey, learned AG has averred that the learned Single Judge ought to have been conscious about the limitations of any judicial forum to interfere by any judicial interdict to compel the executive government to disburse its finances in a way departing from its financial policy which has no legally binding requirements. In the context of the changed policy decision taken in 1998 by the State government immediately after the period covered by the 3rd Tripura Pay Commission there could be no question of any promissory estoppels, expressed or implied, against the State government to go on releasing the DA for its employees at the same rate as available to the central government employees till 27.08.2011 when merely a notification was issued in clarification of the previous decision of the State government that the government has been and will continue to release DA/DR at a rate and on such periodicity, which will be specified by the State government from time to time depending on the resource position of the State.

[14] The learned Single Judge observed that the decision of the Council of Ministers quoted in paragraph-9 of the petition had not been straight away admitted by the respondent but they have stated that the said decision has been extracted from an unsigned confidential memorandum placed before the Council of Ministers and that no records have been placed before this Court to show that that the policy of releasing DA at the rate of central government employees has been changed earlier before the memorandum dated 27.08.2011 or there had been any policy decision to change the policy as declared by the Council of Ministers by their decision taken on 26.12.1996. Having observed thus, the Single Judge was pleased to quote a decision taken in the meeting of

the Council of Ministers on 03.09.2011 as pleaded in the counter affidavit of the state as may be reproduced hereinbelow:

“While the rates declared by the Central Government have always been kept in view, the Government has been and will continue to release DA/DR at a rate and on such periodicity, which will be specified by the State Government from time to time depending on the resource position of the State. This policy decision is in clarification of the previous decision in this regard.”

[15] The conclusion and decision recorded by the learned Single Judge is wholly erroneous and factually without any basis inasmuch as, there had been any decision taken by the State government that it is following the central rate of DA. To buttress this point, learned Advocate General has drawn attention of this Court to the decision of the Cabinet dated 26.12.1998 in respect of implementation of recommendation of the Tripura 4th Pay Commission, the following has been noted as under:

“8. Dearness Allowance

The Dearness Allowance may be released on the pattern of the Government of India depending on availability of fund.

At present DA of 8% on the revised scale may be released w.e.f. 1-10-98 and transferred to GPF along with pay and other allowances for all category of employees. The additional DA of 5% may be released w.e.f. 1-1-99 and may be transferred to GPF. At the same time the D.A. already impounded may be permitted to be drawn with effect from 1-2-99.”

Consequent policy notification the government of Tripura, Finance Department dated 27.08.2011, produced by the State has been also quoted which clearly depicts the government stand and for the purpose of reference it may be read as follows “the government has been and will continue to release DA/DR at a rate and on such periodicity, which will be specified by the State Government from time to time depending on the resource position of the state. This policy decision is in clarification of the previous decision in this regard.”

[16] The government had never taken any policy decision to release DA/DR at the central rate. What was decided was that DA would be released on the pattern of government of India depending on availability of fund and the rate and periodicity will be specified by the government from time to time depending on the resource position. In the counter affidavit it has been clearly stated that the committee recommends that the State Government may consider

releasing the entire 16% DA to the employees while implementing revision structure of pay structure.

[17] Therefore, the committee recommended to State government to only consider releasing the entire 16% DA to the employees while implementing revision of pay structure. The PRC (Pay Review Committee) did not give any recommendation on future payment of DA. The recommended rate of 16% was released with effect from 01.01.2009. The state government could not follow central rate even after the PRC will be clear from the fact that when 16% of DA was released w.e.f. 01.01.2009, the central rate had already changed to 22% w.e.f. 01.01.2009. Since then, DA is being released at a rate decided by the State government from time to time on the pattern of the central government depending on the resource position as seen from Annexure-R/10.

[18] In order to clear any confusion arising out of the alleged decision of the Council of Ministers upon the recommendation of Pay Review Committee 2009, wherein, it has been observed that the government has been and will continue to release DA/DR at a rate and on such periodicity, which will be specified by the State government from time to time depending on the resource position of the State. The policy decision is in clarification of the previous decision in this regard.

[19] It is thus apparent on the face of the pleadings that not only the answering State respondents had denied the veracity of the statements made in the judgment of the learned Single Judge, rather had fortified the government stand by producing relevant uncontroverted documents at Annexures-R/10, R/11, R/12, R/13, R/14 and R/15 as well quoting from the same in the pleading to prima facie show that the State government had never ever taken any decision to pay DA to State government employees at central government rate. The consistent policy had been to pay DA/DR on the pattern of central government depending on resource position of the State and also to release DA/DR at a rate and on such periodicity which will be specified by the State government from time to time depending on the resource position of the State.

[20] The learned Single Judge has failed to appreciate that after the release of the 3rd instalment of 11% of the DA in favour of the State government employees by the memorandum dated 29.01.1997, by which the mandamus issued in Civil Rule No.525 of 1995 was fully complied with, though the State government went on releasing DA in favour its employees at much lower rates and different periodicity from those made available to the central government employees from time to time there was no formal objection made b y the petitioner association or anybody else in accepting such DA for years together till the representation was made to the Chief Secretary of the State Government as late as 10.10.2010 before moving the writ petition.

[21] In support of his contention, learned Advocate General has placed his reliance upon a decision of the Apex Court in *the State of Madhya Pradesh v. G.C. Mandawar*, reported in *AIR 1954 493*, wherein the Court held thus:

"3. In the petition it was alleged that "the State Government should have uniformly adopted the Government of India rates for all its servants and the discrimination in making the two-fold slab and accepting the Government of India rates for one slab, i.e., for servants receiving salary over Rs. 400, and not accepting them in respect of the other slab, i.e., of servants drawing below Rs. 400, is highly discriminatory."

That "the State Government servant has a right to be treated equally with the Central Government servant similarly situated,"

and that "every servant has these fundamental and natural rights and the petitioner and the members of the Ministerial Services Associations have a right to demand from the respondent the Dearness Allowance at the Government of India rates."

The petitioner then prayed:

"That declaring that all ministerial servants are entitled to the Government of India rates of Dearness Allowance or in any case adequate Dearness Allowance, the State Government should be directed by a writ of mandamus or by any other suitable writ or direction to cancel the discriminatory rules of Dearness Allowance and adopt the Government of India rates to all servants without discrimination or in any case, to provide with adequate rates of Dearness Allowance sufficient to provide reasonable subsistence for them.

The Government contested the petition on the grounds, firstly, that the claim for dearness allowance was not justiciable, and secondly, that the

difference in the scales of dearness allowance adopted by the Commission and by the Committee did not violate article 14. The learned Judges (Sinha C.J. and Bhutt J.) held that under the rules dearness allowance was placed on the same footing as pay, and that the claim relating thereto was therefore justiciable; and that the differentiation made between the employees of the Central Government and of the State Government in the matter of the grant of dearness allowance rested on "no intelligible and reasonable basis," and that the Resolution dated 16th September, 1948, was therefore bad. They accordingly issued a direction to the State Government that they do reconsider the question of dearness allowance payable to the employees concerned. It is against this judgment that the present appeal has been preferred by the State Government on a certificate granted under article 132(1) of the Constitution.

5. On the first question, Rule 44 of the Fundamental Rules runs as follow:

Subject to any restrictions which the Secretary of State in Council may by order impose upon the powers of the Governor-General in Council or the Governor in Council, as the case may be, and to the general rule that the amount of a compensatory allowance should be so regulated that the allowance is not on the whole a source of profit to the recipient, a Local Government may grant such allowance to any Government servant under its control and may make rules prescribing their amounts and the conditions under which they may be drawn.

Under this provision, it is a matter of discretion with the local Government whether it will grant dearness allowance and if so, how much. That being so, the prayer for mandamus is clearly misconceived, as that could be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule 44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance; it imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion, and no mandamus can issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced."

[22] In view of above discussion and the principle laid down by the Apex Court, we are of the considered opinion that the conclusion and decision as arrived at by the learned Single Judge in the judgment and order is contrary to records and prima facie without any basis whatsoever. There being no decision of the Government to pay DA at central rate beyond the period dealt with by the earlier decision in Civil Rule-525 of 1995, i.e. the 3rd Pay Commission, no mandate as has been directed in the order of the learned Single Judge which can be sustained in the eye of law.

[23] It is well settled proposition of law that there is no right *per se* vested on any employee to claim DA as a right. DA is extended to service employees to remedy malady of inflation. There is a distinction between DA and Dearness Pay and the two concepts cannot be confused with each other. It is not any more *res integra* that no employee has a right to claim DA. Consequently, no writ can lie far less a mandamus can be prayed for commanding the government to pay DA at any particular rate. [(2013) 2 SCC 772 Kallakurichi Taluk Retired, Officials Association, Tamil Nadu and Others v. State of Tamil Nadu].

[24] While rejecting the contention of the petitioner to the effect that on mandamus in perpetuity can flow from the earlier judgment dated 07.02.1996 passed in Civil Rule 525 of 1995, the learned Single Judge did not have any material basis to proceed any further and hold contrary to records that the State Government was still following the central rate of DA. The entire case of the writ petitioner has been developed absolutely without any substance on record and rather contrary to the materials apparent on the face of the records.

[25] Far from there being any policy in operation there is not even any primary material to show that State government had ever decided to pay DA to its employees at central rate. The decision dated 26.12.1998 espoused by the petitioner, as quoted in paragraph 5 of the judgment and order speaks of release of DA on the pattern of government of India and this word pattern has been interpolated by the petitioner to be rate as is seen in paragraph-6 of the judgment and order and later on accepted by the learned Single Judge in his observation and conclusion recorded which is absolutely untenable in law.

[26] The State government has been repeatedly deciding right from 26.12.1998 that DA may be released on the pattern of government of India depending on the availability of fund and that DA of 8% of revised scale may be released with effect from 01.01.1998 to be reiterated and clarified again on 06.09.2011 in no uncertain terms that the policy of the State government in 1998 was that DA would be released on pattern of Government of India

depending upon the availability of fund and that the government has been and will continue to release DA/DR at a rate on such periodicity which will specified by the State government from time to time depending on the resource position of the State. The policy decision is in clarification of the previous decision in this regard. This clarification is obviously intended and meant to take effect on and from the period intended to be regulated by the Cabinet decision dated 26.12.1998 i.e. post 3rd Pay Commission w.e.f. the period covered by Tripura 4th Pay Commission.

[27] Locus of the writ petitioner to file the writ petition even at this appellate stage as the same germane to the jurisdictional issue of the entire proceeding. The writ petition has been filed in the name of the Tripura Government Employees Federation but, nowhere it is pleaded as to under which legal provision, if at all the said federation is registered. An unregistered organization merely on recognition given by any executive authority for the limited purpose of participation in collective bargaining process do not assume the status of a *de jure* person so as to maintain a writ petition in its name, admittedly it is no one's case that Tripura Government Employees Federation is a *de facto* person. So there is a question regarding maintainability of the writ petition.

[28] Regarding writ of mandamus on the issue of DA by the State Government to its employee has clearly been dealt with FR-44 wherein, it has observed that *mandamus can be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule-44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance, if imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion. No mandamus can, therefore, issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced.*

[29] As per decision, the DA was to be on pattern of and not at par with central government. Following the central pattern did not mean that at all points of time, DA released by the State had to be equal to the central rate. Only the pattern of government of India was to be followed not the rate at any given point time. In fact, the chart of DA of central and state government in Annexure-R/10 will clearly indicate that the state's rate was always lagging behind central rate since first release of DA on revised pay after 4th Pay Commission report i.e. 01.10.1998.

[30] The basic foundation of the judgment underwent change after 1998 when new policy decision was taken based on report of next pay commission. Therefore, the practice followed by the centre cannot be applied in case of employees under the State. The existing policy followed by the State government was to release of DA at a rate and at such periodicity which is decided by the government from time to time depending on its financial resources which is not at par with the rates of the central government. This can be proved from a comparison of DA rates released by centre and state over the years, which clearly shows that the state has been following its own policy different from the centre.

[31] It reveals from the report of PRC, 2008 that the committee recommended to State government to only consider releasing the entire 16% DA to the employees while implementing revision of pay structure. The PRC did not give any recommendation on future payment of the DA. The recommended rate of 16% was released with effect from 01.01.2009. The state government could not follow central rate even after the PRC will be clear from the fact that when 16% of DA was released w.e.f. 01.01.2009, the central rate had already changed to 22% w.e.f. 01.01.2009 and since then, DA is being released at a rate decided by the State government from time to time on the pattern of the central government depending on the resource position.

[32] After the acceptance of the PRC recommendation on DA the government issued memo No. F.5 (4)-FIN(G)/09 dated 5th May, 2009 releasing 16% DA in the revised pay structure to the State government employees w.e.f.

01.01.2009. Therefore, it cannot be said that the government decided to release central rate of DA because from the very first release, state rate of the DA was different from the central rate. The central rate w.e.f. 01.01.2009 was 22% whereas; in the State DA was released @16% w.e.f. 01.01.2009.

[33] The government of Tripura during the year 2011 has issued a notification and placed reliance to the policy in issuing DA and that has been issued basing upon the 1994 pay revision of the Government of India and accordingly, DA has been fixed and the State Government is issued a clarification to that effect. For the purpose of reference the notification dated 27th August, 2011 may be reproduced hereunder:

“No.F.6(1)-FIN(PC)/2008 (Part-1)

Government of Tripura.

Finance Department.

Dated, Agartala, the 27th August, 2011.

NOTIFICATION

Subject: Regarding State Policy on release of DA/DR

The State Government has been reviewing the financial difficulty arising out of highly unfavourable grant awarded by 13th Finance Commission which has seriously under assessed the state's requirement for salary, pension and other committed liabilities.

The Policy of the State Government in 1998 was that DA would be released on the pattern of Government of India depending upon availability of fund. In other words, only the pattern of Government of India was intended to be followed by the State Government subject to availability of funds.

In such circumstances, the Governor is pleased to take a policy decision on DA/DR as follows:

“The government has been and will continue to release DA/DR at a rate and on such periodicity, which will be specified by the State Government from time to time depending on the resource position of the State. This policy decision is in clarification of the previous decision in this regard.

By the order of the Governor.

**Commissioner & Secretary
Government of Tripura.”**

[34] In view of above discussions and after thorough analysis of the material evidence on record, we are of the opinion that the present appeal needs to be allowed by setting aside the judgment and order passed by the learned Single Judge. Accordingly, the same is ordered on the basis of the below mentioned reasons viz:

i. The petitioners are not recognized persons under the statute to approach before the Court under Article-226 of the Constitution of India seeking mandamus.

ii. There is no cause of action and there is no impugned order.

iii. The prayer which is sought for in the writ petition referring to the decision taken by the Gauhati High Court in a particular case cannot be made binding over this Court for issuance of mandamus.

iv. With regard to issuance of DA since it varies from year to year, there cannot be fixed amount that can be directed to be issued.

v. Issuance of DA is a policy decision and since there is no express policy decision with regard to issuance of the DA as relied by the learned Single Judge is *ex-facie*, incorrect on factual and legal aspects.

vi. The government of Tripura during the year 2011 has issued a notification and placed reliance to the policy in issuing DA and that has been issued basing upon the 1994 Pay Revision of the Government of India and accordingly, DA has been fixed and the State Government has issued a clarification to that effect. The said notification holds good and the same is not challenged.

vii. The DA as a matter of statutory right cannot be claimed as decided by the Apex Court in way back in 1954 in **G.C. Mandawar**, reported in **AIR 1954 493** [supra] wherein, the Apex Court has expressed its concerned with regard to the DA that it is not a fundamental right as indicated in the Fundamental Rule-44, wherein, it has been stated as follows:

“Mandamus can be granted only when there is in the applicant a right to compel the performance of some duty cast on the opponent. Rule-44 of the Fundamental Rules confers no right on the Government servants to the grant of dearness allowance, if imposes no duty on the State to grant it. It merely confers a power on the State to grant compassionate allowance at its own discretion. No mandamus can, therefore, issue to compel the exercise of such a power. Nor, indeed, could any other writ or direction be issued in respect of it, as there is no right in the applicant which is capable of being protected or enforced.”

[35] But, when by operation of the policy, entitlement of DA becomes due, it becomes debt in nature and it has been held by the Apex Court in ***State of Madhya Pradesh v. G.C. Mandawar*** that unlike England, in our country such debt due to be discharged by the Government could be attached and *when the State cannot be compelled by mandamus to grant DA/DR but when entitlement accrues by way of the policy and the same is not paid, mandamus can be issued. While issuing such mandamus the Court may take a pragmatic approach. For certainty of the rate, entitlement of the State Government employees cannot be denied by the respondent. Even there cannot be any amount of debate that this financial relief [DA/DR] is granted to the employees or the pensioners to adjust the inflationary effects or to preserve actual wage value. Its impounding for uncertain and unlimited period cannot be terms as fair labour practice.*

[36] For the reasons indicated above and more particularly, no such policy is enumerated from the records and for lack of other cogent reasons as indicated above, the respondents have no right to claim for any DA as per central rate. There is no substantive right of anyone to claim DA in the absence of any statutory formula, design or mandate. DA is solely governed by FR-44 and it is the sole discretion of the employer. There are also no promissory estoppels that government had made for certain rate of Dearness allowance. In this case there is no decision by the government that any point of time, as has been sought to be made out by the respondents.

[37] When the Council of Ministers approved the implementation of the recommendation of the Fourth Tripura Pay Commission, in its meeting held on 26.12.1998 stating that “*the dearness allowance will be released on the pattern of the government of India depending on availability of fund*” and as per this decision, the dearness allowance to be on pattern of and not at par with central government. Following central pattern did not mean that at all points of time; the dearness allowance released by the State had to be equal to the central rate. Only the pattern of government of India was to be followed not the rate at any given point of time.

[38] In view of above observations and reasons, the present appeal preferred by the appellant-State, stands allowed setting aside the judgment dated 28.04.2016 passed in WP(C) No.268 of 2011, as devoid of merits and the WP(C) No.268 of 2011 is not maintainable and thus, the same stands dismissed.

[39] The writ appeal stands allowed and disposed of. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUDGE

CHIEF JUSTICE [ACTING]

A.Ghash

