

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 289 of 2023

Ratan Dey

---Petitioner(s)

Versus

The State of Tripura & 4 Ors.

---Respondent(s)

For Petitioner(s)	: Mr. P. Roy Barman, Sr. Adv. Mr. S. Bhattacharjee, Adv.
For Respondent(s)	: Mr. B. Majumder, Deputy SGI.
Date of hearing and date of judgment and order	: 12.05.2023.
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.

[2] It is the case of the petitioner that through fair and transparent selection process, the petitioner was offered in the post of Pump Operator under the respondents. Accordingly, the petitioner joined in the same post on 12.04.1989, in the scale of pay of Rs.970-2400/-. After 10 years of continuous and satisfactory service in the post of Pump Operator, without any promotion, the petitioner was provided with the benefit of 1st Career Advancement Scheme (CAS) on 12.04.1999 in terms of ROP Rules, 1999 in the scale of pay of Rs.4000-7890/- in pursuance with the notification dated 01.03.1999 issued by the Secretary, Finance Department and Memo, dated 03.01.2001 issued by the Executive Engineer, DWS Division, Government of Tripura.

[3] Similarly, after completion of further 8 years of continuous and satisfactory service in the post of Pump Operator, without any promotion, the petitioner was provided with the benefit of 2nd Assured Career Progression (ACP) on 12.04.2006, in terms of ROP 2009, in the scale of pay of Rs.4000-7890/-.

[4] Thereafter, after completion of further 7 years, total 25 years of continuous and satisfactory service, in the post of Pump Operator, without any

promotion, the petitioner was provided with benefit of 3rd Assured Career Progression (ACP) on 12.04.2014, in terms of ROP 2009, in the scale of pay of Rs.5310-24000/- with Grade Pay of Rs2100/-.

[5] It is submitted by the petitioner that he retired from service on superannuation w.e.f. 31.10.2022 as pump operator. At the time of his retirement, his last basic pay was Rs.59000/- in the scale of Rs.5700-24000/- with Grade Pay of Rs.4200, PB-II in terms of TSCS (Revised Pay Rules), 2017.

[6] Further it is submitted by the petitioner that after four months of his retirement from service on superannuation, the Sr. Accounts Officer, O/o the Accounts General (A&E), Tripura, Agartala, issued a letter dated 14.02.2023, to the Executive Engineer, DWS, Govt. of Tripura. Through the letter dated 14.02.2023 it was informed to the petitioner that his regulation of pay is found to be incorrect. The petitioner strongly denied the disputes, the alleged calculation, attached with the impugned letter dated 14.02.2023.

[7] It is further submitted by the petitioner that it is the mandate of Section 7(3) of the Act, 1972, that within 30 days of retirement full & final payment of gratuity is to be caused & if not caused statutory interest has to be paid for deferred payment of gratuity. Moreover, the gratuity of the petitioner ought to be calculated on the basis of ceiling limit of Rs.20 lakhs as per Payment of Gratuity Act, 1972. Moreover, while calculating gratuity the last basic pay of the petitioner must be counted @ Rs.59000/-. But most erroneously, the gratuity of the petitioner was calculated considering his last basic pay i.e. Rs.55400/-. 75% of the gratuity amount was released in favour of the petitioner on 22.11.2022 and 25% still withhold without any reason.

[8] Being aggrieved thereby, the petitioner has approached this court seeking relief *inter-alia*:

- (i) Issue Rule upon the respondents to show cause as to why writ in the nature of mandamus and/or order or direction of like nature shall not be issued whereby quashing & cancelling the letter dated 14.02.2023, issued by the senior Accountants Officer, AG (A&E), Tripura,

Agartala to the Executive Engineer, DWS, Division-I, Agartala, West Tripura, Govt. of Tripura.

- (ii) Issue Rule upon the respondents to show cause as to why writ in the nature of mandamus and/or order or direction of like nature shall not be issued whereby quashing/cancelling the officer order dated 30.03.2023 issued by Executive Engineer, DWS, Division-I, Agartala, West Tripura
- (iii) Issue Rule upon the respondents to show cause as to why writ in the nature of mandamus and/or order or direction of like nature shall not be issued whereby directing the respondents to re-fix and re-determine the regular monthly pension & other pensionary benefits including gratuity & leave encashment benefit after allowing the petitioner the benefit of his last basic pay @Rs.59,000/- in the scale of Rs.5700-24000/- with Grade Pay of Rs.4200/- w.e.f. 31.10.2022 the date of superannuation of the petitioner.
- (iv) Issue rule upon the respondents to show cause as to why writ in the nature of mandamus and/or order or direction/directions shall not be issued whereby directing the respondents to cause full and final payment of gratuity to the petitioner calculating the upper ceiling limit as Rupees 20 Lakhs (twenty lakhs) and taking into account, the last basic pay of the petitioner @Rs/59,000/- and release the remaining amount of gratuity with interest 9% thereon w.e.f. the date when the petitioner became entitled to get full and final payment of gratuity till the payment is made.

[9] Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned Deputy SGI, appearing for the respondents.

[10] After perusing the entire records and having considered the submission made by the counsel for the parties, it appears to this court that there are two issues which fall for consideration before this court.

1. Whether the respondents can take unilateral decision with regard to the pay benefits of the petitioner without giving him a reasonable opportunity
2. Whether the respondents are justified in their action with regard to recovery of any excess amount paid to the retired employee and whether the same is recoverable.

[11] In so far as the issue No.1 is concerned, this court has no hesitation to say that the action initiated by the respondent seems to be unilateral and the same is against doctrine of *audi alteram partem* and accordingly the same is answering in favour of the petitioner.

[12] In so far as the issue No.2 is concerned with regard to the recovery of the surplus amount made to the retired employee, the Apex Court has already decided in ***State of Punjab & Ors. vs Rafiq Masih (White Washer)*** reported in

(2015) 4 SCC 334 and also in **Thomas Daniel vs State of Kerala** reported in **AIR 2022 SC 2153**. Both the judgment stated cited above prohibited recovery of overdrawn of an amount from the retired employees for refunding the amount recovered from the employees after their retirement.

[13] In view of the issues dealt above, it appears to this court that both the issues are answering in favour of the petitioner and accordingly the writ petition is deemed to be allowed.

[14] Appreciating the facts and circumstances involved in the matter, the present writ petition is allowed and disposed of directing the respondents to reconsider the matter of the petitioner and issue appropriate orders in the light of the judgment cited above and in accordance with law. It is needless to mention here that the said action shall be taken by the respondents as expeditiously as possible, preferably within a period of two months from the date of receipt of the copy of this order.

[15] In the meanwhile, in so far as the recovery already been made by the respondents shall be released in the favour of the petitioner, as the same is against the judgments passed by the Apex Court as stated (supra).

JUDGE