

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.351 of 2023

Sri Apurba Chakraborty,

son of late Anil Baran Chakraborty, resident
of Purba Shibnagar, near Anik Club, Kalitala,
P.O. College Tilla, P.S. East Agartala, Sub-
Division-Agartala, District- West Tripura, PIN-
799004

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

- V e r s u s -

1. **The State of Tripura,**
represented by the Commissioner &
Secretary, Department of Agriculture
& Farmers Welfare, Government of Tripura,
having his office at New Secretariat Complex,
Gorkhabasti, Agartala, P.O. Kunjaban, P.S.
New Capital Complex, Sub-Division- Agartala,
District- West Tripura
2. **The Commissioner & Secretary,**
to the Department of Agriculture &
Farmers Welfare, Government of Tripura,
having his office at New Secretariat
Complex, Gorkhabasti, Agartala, P.O.
Kunjaban, P.S. New Capital Complex, Sub-
Division- Agartala, District- West Tripura
3. **The Commissioner & Secretary,**
to the Department of Finance, Government
of Tripura, having his office at New
Secretariat Complex, Gorkhabasti,
Agartala, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division- Agartala, District-
West Tripura
4. **The Accountant General (A&E),**
Tripura, Agartala,
5. **The Executive Engineer (West),**
Department of Department of Agriculture &
Farmers Welfare, Government of Tripura

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

For the Petitioner (s)	:	Mr. Somik Deb, Sr. Adv. Mr. P. Chakraborty, Adv.				
For the Respondent (s)	:	Mr. M. Debbarma, Addl. GA Mr. B. Majumder, Deputy SGI				
Date of hearing	:	28.11.2023				
Date of delivery of Judgment & order	:	12.12.2023				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER

The petitioner, holder of Bachelor Degree of Engineering (Mechanical), joined in the post of Extension Officer (Engineering), Department of Agriculture, Government of Tripura through TPSC on 01.03.1990 and ultimately, was treated as Junior Engineer (Grade-I) as per memorandum issued by the Finance Department, Government of Tripura dated 12.09.1991 and in due course, he went on retirement in the afternoon of 28.02.2022 from the post of Assistant Engineer (Mechanical). Thereafter, the petitioner submitted his pension proposal duly filled up in the parent department and the department vide letter dated 05.04.2022 forwarded such pension proposal to the office of the Accountant General (A&E) and requested to arrange issuance of pension, remaining gratuity and commutation etc.

[2] The respondent No.5 vide memorandum dated 29.03.2022 [Annexure-5 of the writ petition] also accorded sanction for an amount of Rs.14,37,880/- as leave salary treating the last basic of the petitioner to be Rs.1,39,600/-. However, the Senior Accounts Officer lateron vide letter dated 27.06.2022 [Annexure-6 of the writ petition] requested the respondent No.5 to regularise the pay of the petitioner treating his last pay to be Rs.1,35,100/- as per their calculation and to prepare due drawn statement and to send it to Sr. Accounts Officer for further action from their end. The respondent No.5 also thereafter made one communication dated 03.09.2022 [Annexure-7 of the writ petition] to the Treasury Officer, Agartala Treasury No.1 enclosing a certificate that 75% of gratuity amounting to Rs.7,50,000/- and leave

salary amounting to Rs.14,37,880/- were paid to the petitioner, but no provisional pension was disbursed to him and same will also not be disbursed to him from the office of Respondent No.5 in future.

[3] Being aggrieved, the petitioner filed a writ petition being W.P.(C) No.782 of 2022 in this court praying for re-fixing of his pay w.e.f. the date of his joining and thereupon, to grant pension and all other post retirement benefits to him. The court thereafter vide order dated 17.03.2023 directed the respondents to consider the case of the petitioner in the light of the recommendation made by the Senior Accounts Officer vide letter dated 13.06.2022, without expressing any opinion on the merit of the case.

[4] Thereafter, the Joint Director, Directorate of Small Savings issued a letter dated 06.04.2023 to the respondent No.5 according sanction of payment of Rs.98,970/- as Group Insurance benefit in favour of the petitioner. The respondent No.5 then vide **letter dated 27.04.2023 [Annexure 11 of the writ petition]** forwarded the due-drawn statement of the petitioner to the Senior Accounts Officer, office of the Accountant General, Agartala for re-fixing the pay based on the revised pay of the petitioner proposing adjustment of overdrawn amount of Rs.2,35,622/- from the pension benefit of the petitioner. Based on such re-fixing of pay, the respondent No.5 also issued another **letter dated 29.04.2023 [Annexure 12 of the writ petition]** to the Senior Accounts Officer noting the revised leave salary of the petitioner to be Rs.13,91,530/- and proposed for adjustment of Rs.46,350/- from the pension benefit of the petitioner as overdrawn. The Senior Accounts Officer in turn issued **letter dated**

08.05.2023 [Annexure 13 of the writ petition] to the respondent No.5 observing that due-drawn statement with regard to pay and allowances of the petitioner were purportedly found incorrect and also forwarded another calculation sheet suggesting that total sum of Rs.3,37,253/- was paid in excess to the petitioner which was required to be recovered from his pension benefits. It was also intimated that the said amount of Rs.3,37,253/- was already been recovered from the pension benefits of the petitioner.

The above said 3[three] letters dated 27.04.2023, 29.04.2023 and 08.05.2023 under challenge in this present writ petition.

[5] The basic issue involved in this writ petition is that whether the respondents were justified in deducting and recovering, as proposed, such excess amount paid/to be paid to the petitioner as his post retirement benefit, more particularly when the respondents unilaterally fixed the pay and allowances of the petitioner without any sort of his participation in the process of making over payment to him.

[6] Mr. Deb, learned senior counsel appearing for the petitioner strenuously argued that the pay and allowances etc. of the petitioner were unilaterally determined by the department and the petitioner had no contribution therein. Referring to the letter dated 08.05.2023 of the Senior Accounts Officer (Annexure-13 of the writ petition) and its enclosures, Mr. Deb, learned senior counsel drew the attention of the Court that the due-drawn statement in respect of the pay and allowances of the petitioner was prepared covering the period

from 01.09.2009 to 28.02.2022 which is not permissible at law being much beyond the period of 5 years. In this regard, Mr. Deb referred the decision of the Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others***, reported in **(2015) 4 SCC 334** wherein at Para-18, few situations were postulated where the recovery by the employer would be impermissible at law:

(i) Recovery from the employees belonging to Class-III and Class-IV service (or Group C and Group D service).

(ii) Recovery from the retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.

[7] Mr. Deb, learned senior counsel also referred another decision of the Supreme Court in ***Shyam Babu Verma and others vs. Union of India and others***, reported in **(1994) 2 SCC 521**, wherein it was found that the petitioners were entitled only to the pay scale of Rs.330-480/- in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560/- but as they had received the scale of Rs.330-560/- since 1973 due to no fault of them and that said scale was reduced in the year 1984 w.e.f. January 1, 1973, it was, in that circumstances, held that it would only

be just and proper not to recover any excess amount which has already been paid to them.

[8] On similar point, Mr. Deb, learned senior counsel also referred other 2[two] decisions of Hon'ble Supreme Court viz. ***Purshottam Lal Das and others vs. State of Bihar and others***, reported in ***(2006) 11 SCC 492*** and ***Syed Abdul Qadir and others vs. State of Bihar and others***, reported in ***(2009) 3 SCC 475***. In ***Purshottam Lal*** (supra), reference was made by the Apex Court to some other judgments of said Court wherein it was observed that the petitioner was not guilty of any representation or misrepresentation and therefore recovery was not permissible.

[9] In ***Syed Abdul Qadir*** (supra) at Para-57, the following were observed:

"57. This Court, in a catena of decisions, has granted relief against recovery of excess payment of emoluments/allowances if (a) the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee and (b) if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous."

[10] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents No.1,2,3 & 5 in reply submitted that the requisite qualification for appointment as Extension Officer (Engineering), as was advertised by the TPSC, was Madhyamik/H.S. Passed and therefore, the Engineering Degree of the petitioner was not at all a matter of consideration for selection to the post of Extension Officer (Engineering) and his such over qualification did never confer him any right to avail higher pay scale instead of availing salary in the scale of

Rs.1450-3710/- as a Group-C category. Moreover, the Finance Department's memorandum dated 12.09.1991 declaring Degree Holder Engineers as Junior Engineer (Grade-I) was not applicable in cases of Extension Officer (Engineering). But the petitioner was allowed to draw salary in the pay scale of Rs.2000- 4410/- from the date of his joining in the service. According to Mr. Debbarma, learned Addl. GA, the post of Extension Officer (Engineering) was later on converted to the post of Junior Engineer (Grade-I) in the pay scale of Rs.6500-12300/- w.e.f. 01.01.1996 vide office order No.F.2(169)-Agri.(Estt)/91-94/9525-47 dated 29.10.2005, but the pay fixation of the petitioner was wrongly done in the pay scale of Rs.2000-4410/- instead of Rs.1450-3710/- from the date of his entry into service i.e. w.e.f. 01.03.1990 though the post of Extension Officer (Engineering) was converted as post of Junior Engineer (Grade-I) w.e.f. 01.01.1996. Therefore, according to Mr. Debbarma, learned Addl. GA, further amount is also required to be recovered from the petitioner making fresh due-drawn statement w.e.f. 01.03.1990. As submits Mr. Debbarma, the excess amounts of payment as shown in Annexures- 11 & 12 of the writ petition (which are under challenge herein) are also not correct and liable to be increased further.

[11] Mr. B. Majumder, learned Deputy SGI appearing for the respondent No.4 took the attention of the Court to one letter dated 27.12.2023 written by the petitioner to the Accountant General Tripura [Annexure-R/1 to the counter affidavit of the respondent No.4] and relevant paragraphs of the said letter are as under:

"Then, I being aggrieved, I filed a court case bearing No.W.P.(C) 782 of 2022 wherein the office of the Accountant General (A & E), Tripura was the Respondent No.4 which is still now alive. On the other hand, for the purpose of getting my final accumulation of my entire service life in the form of gratuity & commutation, I have rushed away to Finance Department also to check the veracity of the pay regulation as made by the your office and ultimately found that the pay regulation as made by your office having the last pay of Rs.1,35,100/- is a correct one. Moreover, I am very much anxious to finalize the marriage ceremony of my one and only daughter.

In view of the above, you are cordially requested to finalize my withheld gratuity & commutation as per your calculation. I hereby undertake that there will have no objection on my part, if the necessary recovery as per the calculation of your office is made from my gratuity as well as commutation. On the other hand, I am very much agree to withdraw my aforementioned court case bearing No.W.P© No.782 of 2022 for which of your kindness I shall remain thankful to you."

[12] Mr. Majumder, learned Dy. SGI emphatically submitted that by such letter the petitioner is now estopped from challenging the matter of recovery of his overdrawn amount from his pay and leave salary. In support of his contention, Mr. Majumder, learned Deputy SGI referred a decision of the Hon'ble Supreme Court in **High Court of Punjab and Haryana and others vs. Jagdev Singh**, reported in **(2016) 14 SCC 267**, wherein it was observed as under:

"9. The submission of the respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made."

[13] Mr. Deb, learned senior counsel in reply pointed out that no undertaking was given by the petitioner in the said letter regarding recovery of excess amount of pay and the leave salary, rather the said letter was confined only with regard to commutation and gratuity

and therefore, it cannot work as an estoppel against the present claim of the petitioner.

[14] In the case in hand, there is no dispute that excess amount was paid to the petitioner both on the counts of pay and the leave salary. In other words, there was overdrawal of said amount by the petitioner. As per Annexure-13 of the writ petition i.e. the letter of Accountant General dated 08.05.2023 the total amount of overdrawal was assessed at Rs.3,37,253/- on the following 2[two] counts:

Excess drawal amount of pay and allowances	: Rs.290903/-
<u>Excess drawal amount of Leave Salary</u>	: <u>Rs.46350/-</u>
	Rs.3,37,253/-

[15] Due-drawn statement as was prepared to determine such overdrawal covers the period from 01.01.2009 to 28.02.2022 i.e. much more than 5 years. Admittedly order of recovery has also been made after the petitioner has gone on retirement. It is also not the case that the excess amount was paid due to any misrepresentation made or fraud exercised by the petitioner, rather it was paid by the department itself due to miscalculation of pay of the petitioner. Therefore, principle as laid down in **Rafiq Masih** (supra) and **Syed Abdul Qadir** (supra) are squarely applicable in the present case.

[16] In **Jagdev Singh** (supra), as relied by Mr. Majumder, learned Dy. SGI, the respondent while in judicial service submitted an undertaking while opting to take the benefit of revised pay scale, that any excess amount which may be found to have been paid to him will be refunded to the Government either by adjustment against future payment due or otherwise. Ultimately, the respondent was

compulsorily retired from the service within a short span of time and recovery of excess amount was ordered. In that context, Hon'ble Supreme Court was pleased to observe that in such case the undertaking as was specifically furnished by the officer at the time when his pay was finally revised, was binding on him, as he was clearly on the notice of the fact that future re-fixation or revision may warrant an adjustment of excess amount, if any, made. However, the present case in hand is on a different footing and therefore, ratio of **Jagdev Singh** (*supra*) is not strictly applicable in this case. Moreover, Mr. Deb, learned counsel rightly pointed out that the undertaking as was given by the present petitioner was regarding in the matter of gratuity and commutation only and not regarding any other matter. More so, the letter itself projects a situation of financial hardship and anxious condition of the petitioner that he was already gone on retirement but his post retiral benefits were not regularised by the Department and for that purpose, he was running to the doors of different Departments and even he had to approach the High Court and meanwhile he had to arrange the marriage of his sole daughter too. In such a constrained situation, he issued such undertaking to somehow get his post retirement benefits regularised as early as possible. Therefore, said letter cannot be used strictly against him to deprive him from his lawful claim, if any.

[17] As a result, it is held that the order of recovery/adjustment as passed by the respondents vide letters dated 27.04.2023, 29.04.2023 and 08.05.2023 [Annexures-11,12 & 13 respectively of the writ petition] are iniquitous and harsh towards the petitioner and

therefore should not be allowed to be acted upon. Accordingly, the respondents are prohibited from giving any effect to the above said letters and to cause any recovery from the post retirement service benefits of the petitioner under above said counts. If already any recovery is made meanwhile by the respondents, same shall be refunded to the petitioner within 08[eight] weeks from today.

Accordingly, this writ petition stands allowed and disposed of.



SATABDI
DUTTA

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Sujay