

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.75 of 2023

1. The State of Tripura, represented by the Chief Secretary, Government of Tripura, Agartala, Civil Secretariat, P.O. Kunjaban, Pin-799006
2. The Secretary to the Government of Tripura, Department of Social Welfare and Social Education, Civil Secretariat, P.O. Kunjaban, Agartala. Pin-799006
3. Additional Secretary to the Government of Tripura, Department of Social Welfare and Social Education, Civil Secretariat, P.O. Kunjaban, Agartala, Pin-799006
4. The Secretary to the Government of Tripura, Department of Finance Department, Civil Secretariat, P.O. Kunjaban, Agartala, Pin-799006
5. The Director of Social Welfare and Social Education, Government of Tripura, Abhoynagar, P.O. Abhoynagar, P.S. East Agartala, District- West Tripura, Pin-799005
6. The District Inspector of School Education, Government of Tripura, Srineketan Complex (2nd Floor), Kailashahar, Unakoti District
7. Child Development Project Officer, Government of Tripura, Kumarghat ICDS Project, Kumarghat, Unakoti District.

.....Appellant(s);

Versus

1. Smt. Dipali Rani Datta (Deb), W/o late Nilon Kanti Deb, resident of Village-Taraninagar, P.O- Kanchanbari, P.S- Fatikroy, Kailashahar, District:- Unakoti Tripura
2. Accountant General, Tripura, Malancha Nibash, PO- Kunjaban, PS- East Agartala, District- West Tripura
3. Senior Accounts Officer, Office of the Accountant General, Tripura, Malancha Nibash, PO- Kunjaban, PS- East Agartala, District- West Tripura

.....Respondent(s).

For Appellant(s) : Mr. D. Sarma, Addl. G.A.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Order

13/07/2023

Heard Mr. D. Sarma, learned Additional Government Advocate for the appellants-State and Mr. Bidyut Majumder, learned Deputy SGI for the respondent-Accountant General.

2. The writ petitioner/respondent herein approached the Writ Court for setting aside letters dated 04.02.2022 and 22.03.2022 issued by respondent

No.9 in favour of the respondent No.7 and the letter dated 06.05.2022 issued by respondent No.7 whereby she was informed that an excess amount of Rs.1,22,100/- paid to her as gratuity shall be recovered. Petitioner also prayed for counting her past service as School Mother from 23.07.1990 to 30.09.2007 for the purposes of all retiral benefits including pension, gratuity with interest.

3. Undisputed facts as borne out from the records are that petitioner/respondent herein was appointed as School Mother on consolidated fixed pay on 13.09.1990. She was appointed as a School Mother on regular basis on 01.10.2007 and she superannuated from service w.e.f 30.04.2021. The respondents thereafter issued a letter dated 06.05.2022 informing her of the recovery of Rs.1,22,100/- paid to her as gratuity. Learned Writ Court observed that in similar circumstances, one Anarkali Begam had approached this Court in WP(C) No.439/2020 with a direction to count her past services rendered as School Mother on consolidated fixed pay w.e.f. 25.07.1990 for the purposes of retirement benefits including pension. The writ petition was allowed and the entire service of the said petitioner from her initial engagement as School Mother till her regularization was also held to be counted for purpose of calculating her pension and other retiral benefits. A direction was issued for payment of the consequential pensionary benefits to her. Taking into account the instance of similarly situated person who also worked as a School Mother from 23.07.1990, the Writ Court allowed the writ petition by setting aside the letters dated 04.02.2022 and 22.03.2022 so far as it relates to the recovery of excess amount. However, with regard to granting arrears in terms of gratuity, the respondents were directed to take a decision and communicate the same to the petitioner in accordance with law.

4. Mr. D. Sarma, learned Additional Government Advocate for the appellants-State, has sought to distinguish the case of Smt. Mamata Rani Roy (Saha) being WP(C) No.77/2015 and also the case of Smt. Chhabi Rani Roy being WP(C) No.853/2017 on the ground that in their cases, the Writ Court had taken a sympathetic view in favour of such similarly situated persons as their total period of service, after being regularized, was less than 10 years. In the present case, the writ petitioner had gained 13 years of regular service after being regularized on 01.10.2007 and as such, there was no reason to extend her similar benefits of counting past service.

5. Learned Additional Government Advocate for the appellants has, however, not been able to meet the legal position settled by the Apex Court in the case of *State of Punjab and others v. Rafiq Masih (White Washer) and others* reported in (2015) 4 SCC 334 where the following ratio has been rendered.

“18. It is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in 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 the 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.”

6. It is not in dispute that School Mother is not a gazetted employee, rather a ministerial staff. Therefore, after her retirement, the recovery of the

excess amount from her would not only endure hardship but would also be in teeth of the ration rendered by the Apex Court in the case of *Rafiq Masih* (supra). Moreover, there is no reason why the same principle of counting the past service as allowed in the case of the similarly situated petitioners, who were also School Mothers and accepted by the State, should not be extended to the present writ petitioner. As such, we do not find any reason to interfere in the impugned order. Learned Writ Court has, after quashing the recovery part of the impugned order, left it to the respondents to take a decision in accordance with law.

7. The instant appeal is, therefore, dismissed.

Pending application(s), if any, also stand disposed of.

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

