

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
IA No.01 of 2023 IN Review Petition No.43 of 2023

Sri Kajal Chandra Deb and others

..... Applicant(s)

V E R S U S

The State of Tripura and others

.....Respondent(s)

For Applicant(s) : Mr. A. Bhowmik, Advocate,
Mr. S. Dey, Advocate.

For Respondent(s) : Mr. D. Sharma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

21/08/2023

The instant review petition is directed against the impugned judgment dated 16.11.2021 passed by the Coordinate Bench of this Court in WA No.258 of 2021 which reads as under :

“[1] This Writ Appeal is directed against the judgment and order dated 08.03.2021 delivered by the learned Single Judge in WP(C) No.1265 of 2019.

[2] Factual background of the case may be reproduced from the impugned judgment which is as under: “By means of this writ petition, the petitioners have urged this court to direct the respondents to quash the office order dated 06.08.2019 [Annexure-7 to the writ petition] whereby the benefit of higher scale of pay of Rs.3050-5910/- as granted in favour of the petitioners has been cancelled and their pay scale has been reduced to Rs.2900-5660/-. Further, it has been urged that the consequential order dated 14.12.2018 as issued by the Executive Engineer be quashed. It has been urged that the respondents be directed to refund the amount that has been recovered from the petitioners as consequence of the said order dated 06.08.2019. Finally, the petitioners have urged that the decision as communicated by the letter dated 07.08.2009 [Annexure-7A to the writ petition] be quashed by this court.

[3] By the communication dated 07.08.2009, the petitioners who are serving in the post of Senior Helper were given the scale of pay of Rs.850-2130/- (the highest scale, in the graded scale No.12) which got Page 3 of 6 WA258 of 2021 revised to the pay scale of Rs.2750-4925/-. Thereafter, the petitioners got one scale advancement to the scale of pay of Rs.2900-5660/- for their completion of seven years of service in the same grade pay scale before 01.01.1999. The petitioners have canvassed that the scale upgradation

cannot be treated as the last scale advancement for their consumption of 3(three) scale upgradation in terms of the Tripura State Civil Services (Revised Pay) Rules, 1999.”

[4] Relying on the judgment dated 26.02.2021 rendered by this Court in WP(C)1266 of 2019, [Sri Kanai Saha and Ors vs. State of Tripura and Ors.], the learned Single Judge held that the petitioners could not make out any difference between the 02 cases and therefore, applying the analogy of the case of Kanai Saha, the learned Single Judge by the impugned judgment dismissed the Writ Petition observing as under :

[11] Mr. K. Nath, learned counsel has in his fairness produced before this court a judgment of the coordinate Bench of this court in the similar circumstances. In the judgment dated 26.02.2021 delivered in W.P.(C) No.1266 of 2019 titled as Sri Kanai Saha and Ors. vs. The State of Tripura and Ors., it had been observed as follows:

“7.The movement of the petitioners from a pre-revised scale of Rs.370-650/- to 400-775/- at the time of implementation of ROP 1988 upon re-designation of their post from Khalasi to Sr. Helper, was thus clearly an availment of scale advancement. If, including such upward movement the petitioners had already availed 3 scale advancements by the time ROP 1999 were promulgated, they did not have a right for further CAS benefit under ROP [Rules] 1999.” The said writ petition had been dismissed on the said analogy.

[12] Mr. Nath, learned counsel has failed to make out any difference for the case in hand to advance a new analogy to claim the reliefs as urged in this petition. The analogy based on which the said writ petition was dismissed is sound and as such it can be applied to the facts of the present writ petition.

In the result, this writ petition stands dismissed as the petitioners were not entitled to further movement and the upgradation /movement as allowed to the petitioners is an act of bona fide mistake.”

[5] The judgment passed in the case of Kanai Saha (supra) was challenged by the petitioners in Writ Appeal No.256 of 2021 which has been decided by this court by a separate judgment delivered today which reads as under:

“ [10] We have perused the entire record and considered the submissions made at the bar. We agree with the findings of the learned Single Judge that upon re-designation of the post from Khalasi to senior helper, the appellants moved to a higher scale of pay which clearly amounted to their availing of a scale advancement. Therefore, the learned Single Judge rightly held that if including such upward move, the appellants had already availed 03 scale advancements by the time ROP, 1999 were promulgated, they were not entitled to further ACP benefit under ROP, 1999.

[11] But insofar as the recovery of excess pay and allowances is concerned, we are of the view that such recovery would be improper and unfair. It will cause serious hardship to the appellants all of whom are stated to have retired from Group-D posts. In the case of STATE OF PUNJAB AND OTHERS VS. RAFIQ MASI(H(WHITE WASHER) AND OTHERS reported in (2015) 4 SCC 334, the Apex Court examined similar issue where the employees were beneficiaries of a mistake committed by their employer and on account of such unintentional mistake, the employees were in receipt of some

monetary benefits beyond their due. After examining the earlier decisions rendered on the said issue, the following parameters were laid down by the Apex Court which would govern the issue of recovery where payments have mistakenly been made by the employer. Observation of the Apex Court in paragraph 18 of the judgment is as under:

“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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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

(iii) Recovery from 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.”

[12] We have considered the instant case in the light of the said judgments of the Apex Court and in our considered view, the impugned order for recovery of excess pay and allowances mistakenly paid to the appellants would amount to a harsh and arbitrary action against the appellants who are stated to have retired from Group-D posts and therefore the impugned order of recovery is hereby quashed. Amount already recovered from the appellants under the said order, shall be refunded to them within a period of 03 months from today and further recovery, if any, shall be stopped. It is however, made clear that their pension and other retiral benefits shall be calculated on the basis of the pay they were actually entitled to at the time of their retirement. In other words, the pay mistakenly granted to them shall not be taken as the basis for determination of their pension and retiral benefits. In terms of the above, the Writ Appeal is disposed of.”

[6] The facts and law being similar in both the cases, the present appeal is also similarly decided.

[7] For the same reasons as in WA 256 of 2021, the impugned order of recovery is hereby quashed. Amount already recovered from the appellants under the said order, shall be refunded to them within a period of 03 months from today and further recovery, if any, shall be stopped. It is however, made clear that their pension and other retiral benefits shall be calculated on the basis of pay they were actually entitled to at the time of their retirement.

In other words, the pay mistakenly granted to them shall not be taken as the basis for determination of their pension and retiral benefits. In terms of the above, the Writ Appeal is disposed of.”

The instant review petition suffers from a delay of 416 days for condonation of which IA No.01 of 2023 has been preferred. Petitioner has furnished the following explanation for condonation of delay.

It is submitted by learned counsel for the petitioners that the impugned judgment was delivered on 16.11.2021. Petitioners got informed regarding dismissal of the appeal from their earlier appointed counsel in the first week of December, 2021 but the petitioners came to know that this Court was on winter vacation at the relevant point of time. Thereafter, the petitioners discussed the issue with their family members and came to know that after dismissal of the appeal by the Division Bench of this Court, the only remedy available to them was to approach the Hon'ble Apex Court. Due to financial constraints, petitioners could not approach the Apex Court and took some time to think about availing the next legal recourse. Petitioners came to know that the learned Single Judge of this Court has allowed the writ petition filed by Sri Dwijen Debnath in WP(C) No.442 of 2020. In the month of July, 2022 the petitioner also came to know that the respondent has complied with the judgment and order dated 30.11.2021 passed in WP(C) No.442 of 2020. Petitioner engaged his counsel but at the relevant point of time this Court was on Puja vacation. Thereafter, the petitioner met his engaged counsel who advised him that before availing the next legal remedy the entire case records need to be perused. Accordingly, the petitioner contacted their previously engaged counsel in the month of January, 2023 and the petitioners were informed that the case file is in the

Chamber of one senior counsel who will be contesting the Assembly Elections and the petitioners were asked to contact in the month of April, 2023. During this period there was assembly election in the State of Tripura and the petitioners could not contact his engaged counsel. The remaining period was consumed in drafting the review petition along with the interlocutory application. It is further submitted that the petitioner is entitled to the exclusion of period of limitation till 28.02.2022 in view of the order passed by the Apex Court in *suo motu* WP(C) No.03 of 2020. It is further submitted that in the meanwhile, the applicant handed over the entire brief to his engaged counsel who took some time to peruse the case record. Thereafter, the said matter was brought to the notice of his engaged counsel who took some time to verify the facts and gather information. It is also submitted that the petitioner had applied for the certified copy of the judgment and order dated 16.11.2021 on 01.08.2022 and the same was supplied to them on 05.08.2022. Therefore, 05 days were consumed in obtaining the certified copy of the judgment and order dated 16.11.2021. Therefore, there was a *bona fide* delay of 416 days. It is submitted that the delay is not intentional. Further, since the learned Single Bench has granted relief in similar circumstances after passing of the Division Bench judgment of this Court in WA No.258 of 2021 from which the instant review petition arises, therefore, the impugned judgment requires review. Delay may be condoned in the interest of justice.

Learned counsel for the State Mr. D. Sharma has strongly opposed the prayer. He submits that the delay is inordinate and unexplained.

Moreover, the petitioner cannot take the plea that the impugned judgment rendered by Division Bench of this Court in WA No.258 of 2021 dated 16.11.2021 is per-incuriam as a later judgment was delivered by the learned Single Bench of this Court granting relief in similar circumstances to another employee. It appears that the impugned judgment of this Court was perhaps not pointed out to the learned Writ Court and therefore not noticed in the judgment dated 30.11.2021. In any case, the petitioner cannot seek review of the impugned judgment on those grounds. As such, both on grounds of delay and merits, the petition deserve to be dismissed.

We have considered the submissions of learned counsel for the parties and taken note of the explanation urged by the petitioner for condonation of delay of 416 days in preferring the instant memo of appeal. The chronology of facts and events narrated by the petitioner in support of his explanation need not be repeated. It appears that even the impugned judgment passed by the Coordinate Bench of this Court is of 16.11.2021. Even excluding the Covid delay as per the order of the Apex Court in *suo motu* WP(C) No.03 of 2020 till 28.06.2022, the review petition has been filed only on 20.07.2023 i.e. after a delay of 416 days for which there is no plausible explanation as such. The petitioner seems to have been taking leisurely time in briefing his counsel, obtaining documents, compliance order etc. little conscious of the huge delay that continued to accrue to his detriment all along. In such circumstances, this Court is of the view that no sufficient cause has been shown on the part of the petitioner for seeking a review of the impugned judgment. It also appears that the basic plea for

seeking review of the Judgment dated 16.11.2021 passed by the learned Division Bench in WA 258/21 as raised by the petitioner in interlocutory application is of a later judgment of the Single Bench of this Court in WP(C) No.442 of 2020 dated 30.11.2021 said to be in case of a similarly situated employee which can hardly be said to be a ground for review.

In such circumstances, since this present review petition suffers from inordinate and unexplained delay, we are not inclined to allow the application for condonation of delay. Accordingly, the same is dismissed. Consequently, the Review Petition No.43 of 2023 is also dismissed.

(T. AMARNATH GOUD) J

(APARESH KUMAR SINGH) CJ

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