

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) 685/2022**

Ashis Das

.....Petitioner

Versus

The State of Tripura and 4 ors.

.....Respondents

For Petitioner(s)	:	Mr. K. Chakraborty, Advocate
For Respondent(s)	:	Mr. M. Debbarma, Sr. GA
		Mr. B. Majumder, Deputy SGI

HON'BLE MR. JUSTICE ARINDAM LODH
Order

31/01/2023

Heard Mr. K. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Additional GA, appearing for the respondents no. 1, 2 and 3, and Mr. B. Majumder, learned Deputy SGI appearing for the respondents no. 4 and 5.

2. Briefly stated, the petitioner was wrongly given the benefits of CAS-II on 01.01.1999, though, he was entitled to the said benefit on 25.10.2000, and this mistake was committed due to the fault of the department concerned.

3. Mr. M. Debbarma, learned Additional GA has fairly submitted that the petitioner was not at any fault in receiving the said excess amount. Learned Additional GA has further submitted that the mistake was detected on 04.05.2022 when Accountant General, Tripura, has informed the respondents-State that the fixation was wrong and the department allowed him CAS-II wrongly.

4. Keeping in mind the ratio laid down in the case of *Thomas Daniel vs. State of Kerala & ors* [Civil Appeal no. 7115 of 2010] and *State of Punjab and others vs. Rafiq Masih (White Washer) and ors.*, reported in (2015) 4 SCC 334, I am constrained to observe that considering the nature of the present case and the situation under which recovery is not held to be permissible by the Hon'ble Supreme Court in *Rafiq Masih (supra)*, the respondents after a lapse of 22 years cannot initiate any recovery proceeding against the petitioner and direct him to make payment of such excess amount. In *Rafiq Masih*, the Apex court has clearly held that recovery by the employers would not be permissible from the employees, when "the excess payment has been made for a period in excess of 5 years, before the order of recovery is issued".

5. In the instant case, excess payment was paid to the petitioner on 01.01.1999 instead of 05.10.2000. The respondent-State could not detect this mistake within five years from the date of such excess payment and it was detected in the year 2022, that is, after a lapse of 22 years. In this situation recovery of such excess amount is impermissible.

6. In view of this, I find no merit in the recovery proceeding initiated by the respondents-State. As such, the recovery proceeding by the impugned order dated 04.05.2022 (Annexure 3 to the writ petition) stands set-aside and quashed. However, fixation of pay may be rectified/corrected treating actual date of his entitlement of CAS-II as on 05.10.2000 for future consideration

of his pension, but, it is made clear that in the process of such re-fixation of pay and pension thereof, the payment of pension and other benefits shall not in any way be withheld.

7. Mr. K. Chakraborty, learned counsel for the petitioner has submitted that a part amount of gratuity and commuted pension amount is withheld till today. The respondents are directed to release all benefits, as stated here-in-above, within a period of 3 weeks from today. The AG, Tripura is directed to regularize the pensionary benefits and all other benefits including leave encashment and gratuity in the light of the above observations and directions made here-in-above.

8. With the above observations and directions, the instant writ petition stands allowed and thus disposed.

Pending application(s), if any, also stands disposed.

JUDGE