

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.13 OF 2024**

Sri Dipak Baidya

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

Versus

The State of Tripura and ors.

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

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. M.L. Roy, Advocate.
Mr. K. Nath, Advocate.

For the Respondent(s) : Mr. A.K. Pal, Advocate.
Mr. D. Sharma, Addl. G.A.

Date of hearing and delivery of
Judgment & Order : 27.06.2024

Whether fit for reporting : YES/NO.

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
J U D G M E N T & O R D E R(ORAL)**

This present writ petition has been filed under Article 226
of the Constitution of India seeking the following reliefs:-

"i) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or order/orders and/or direction/directions of the like nature shall not be issued whereby quashing and cancelling the Notice Vide F.No. TKB /GEN/Legal/2(47)/2020/246-47, dated 23.05.2023 for repayment of alleged excess drawal.

ii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or order/orders and/or direction/directions of the like nature shall not be issued whereby quashing and cancelling the Demand Notice dated 16.08.2023 and Demand Notice dated 20.09.2023 served by the Respondents through their Counsel upon the Petitioner for repayment of alleged excess drawal.

iii) Issue Rule upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or order/orders and/or direction/directions of the like nature shall not be issued whereby directing the Respondent to sanction and release the balance amount Rs. 6,31,415/- payable to the Petitioner in accordance with the Modified Sanction Memo Vide No. TKB/GEN/Legal/2(47)/2020/573-78, dated 22.06.2023.

iv) Make the rules absolute.

v) Call for records.

vi) Pass any further order/orders as this Hon'ble High Court consider fit and proper."

2. Heard Mr. P. Roy Barman, learned Sr. counsel assisted by Mr. M.L. Roy, learned counsel, and Mr. D. Paul, learned counsel appearing for the petitioner as well as Mr. A.K. Pal, learned counsel appearing for the respondents.

3. Mr. Roy Barman, learned Sr. counsel appearing for the petitioner submits that the subject matter involved in this writ petition is squarely covered by the Order passed by this Court on 27.04.2023 in WP(C) No.303 of 2022 as well as by the reported Judgment of the Hon'ble Supreme Court passed in Civil Appeal No.5527 of 2022 titled as M.P. Medical Officers Association Vs. The State of Madhya Pradesh and ors., by Hon'ble Mr. Justice M.R. Shah, wherein, it is the settled principle of law that the employee who had retired from service and once his accounts and retiral benefits are settled and pension is also paid, it is not open for the employer to turn back after sometime and say that by mistake the employer have paid excess amount to the employee and the same needs to be recovered. Learned Sr. counsel submits that such recovery is not permitted under law.

4. On the other hand, Mr. A.K Pal, learned counsel appearing for the petitioner submits that the recovery of said amount is permissible by the employer and is under the ambit of law.

5. Heard and perused the evidence on record.

6. Why back by order dated 27.04.2023 passed in WP(C) No.303 of 2022, this Court has categorically held that following the judgment of the Hon'ble Supreme Court passed in **Civil Appeal No.5527 of 2022,**

wherein, the Apex Court had said that in respect of retired people where excess amount have been paid, the same cannot be recovered, following the said principle, this Court allowed the earlier round of writ petition on 27.04.2023. Again the respondents have issued a fresh demand notice for the same amount and this Court finds fault with the said action of the respondents. The said action of the respondents is arbitrary and illegal and thus, the said impugned demand notice is set aside allowing the present writ petition.

7. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

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SUHANJIT SINGHA
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