

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) NO.94 OF 2023**

Dr. Ajit Kumar Ray,
S/o. Late Manmohan Ray,
R/o 818 Niti Khand-1, Indirapuram,
Ghaziabad(UP)-201014

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

Versus

1. **Union of India through the Secretary,**
Department of Higher Education, M/o HRD, New Delhi,
2. **The NIT,** through the Director, Barjala, Jirania, P.O. Jirania,
Agartala-7990055, West Tripura.
3. **The Registrar in Charge,** NIT, Barjala, Jirania
P.O.- Jirania, Agartala, West Tripura.

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

For the Petitioner(s) : Mr. C.S. Sinha, Advocate.

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

Date of hearing and delivery of
Judgment & Order : 06.02.2024.

Whether fit for reporting : YES.

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

The present writ petition has been filed by the petitioner challenging the proceeding letter of communication dated 27th September, 2022 which deals with the representation made by the petitioner seeking settlement of his amounts which are recoverable from the respondents-NIT towards his services.

2. The respondents without appreciating his contention has not only rejected his request but also warned the petitioner of dire consequences in terms of imposing recovery of heavy amounts for filing meritless cases. Thus, the petitioner by filing this writ petition prayed before this Court to provide him legal remedies.

3. This Court, at the admission stage itself, heard the respondent-counsel, Mr. B. Majumder, learned Deputy SGI on the point that no citizen in the country can be deprived of his opportunity to approach any Court seeking legal remedy. Whether the same is a merit case or merit-less case, this has to be decided by a competent Court but not by the respondents

4. In view of the same, vide order dated 13.02.2023 this Court set aside the impugned order and allowed the writ petition and also imposed a cost of Rs.10,000/- to be paid by the respondents to the petitioner.

5. Aggrieved by the same, the respondents preferred a Writ Appeal No.31 of 2023 and contented that the said order had been passed without giving an opportunity of filing counter affidavit and to ventilate the case of the respondents.

6. In view of the said submission, the Hon'ble Division Bench of this Court vide order dated 22.08.2023 was pleased to

allow the writ appeal and remand back the writ petition before this Court for fresh adjudication.

7. Mr. C.S. Sinha, learned counsel appearing for the petitioner reiterated his arguments made before this Court at the first instance i.e. on 13.02.2023, and contended that the petitioner's right to approach the Court of law cannot be curtailed and the manner in which the respondents has addressed in their communication dated in 27th September, 2022 is high handed and arbitrary. Accordingly, he prayed to confirm the order passed by the Court dated 13.02.2023.

8. On the other hand, Mr. B. Majumder, learned Deputy SGI appearing for the respondents draws the attention of this Court to para No. 31.f) of their counter affidavit and submits that the respondents have paid an excess of Rs.1,04,796.00/- to the petitioner and the respondents are entitled for recovery of the same as the respondents are not liable to pay any amounts to the petitioner. Learned Deputy SGI further contended that the respondents had no intention to make that serious observation in the letter dated 27th September 2022 which is under challenge in the writ petition, and prayed to dismiss the writ petition.

9. Heard both sides and perused the evidence on record.

10. The case of the petitioner is that he has challenged the order dated 27.09.2022 for rejecting the claim of the petitioner for fixation of pay from the date of appointment in terms of the conditions of appointment order under re-employed pensioner rule 4(b)(i) and 4(c) as opted by him and for due promotion, that has been extended to the other similarly situated persons including the junior of the petitioner, namely, Dr. A.K. Sarkar. Neither the pay fixation order nor the order for his due promotion in the post of DEAN was issued, despite submitting the final relieving order dated 22.01.2013 from the IGFRI. The petitioner is entitled to all other consequential benefits in terms of the relevant reemployed pensioner rule 4(b)(i) and 4(c) as opted by him and instructions on the subject.

In so far as the observation which according to this Court was unwarranted in the letter dated 27th September, 2022 addressed by the respondents to the petitioner, the relevant portion of the same is extracted as under:-

"if you further file meritless cases against the NIT Agartala, the authority of NIT Agartala shall be compelled to sue you for recovery of the money spent for defending your above noted meritless cases all of which you have lost till now."

11. Counter affidavit has been filed by the respondents explaining the manner in which the said letter was sent and the same is extracted hereunder:-

"but there was no intention at all to discourage the former employee to approach to the Hon'ble Court"

12. Now on the point of the rights of the citizen to 'access justice', let us produce relevant Articles enshrined in the Constitution of India on this particular issue:-

"Article-21. Protection of life and personal liberty.- No person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 39-A. Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

13. Right to Justice, is a Fundamental Right, as it was made to be part of **Article 21** of the Constitution of India by the Hon'ble Apex Court in the case of **Anita Kushwaha Vs. Pushap Sudan** reported in **(2016) 8 SCC 509** dated **16th July, 2016**.

14. The Hon'ble Supreme Court in **para-10** of said **Anita Kushwaha Vs. Pushap Sudan(supra)** stated thus on the point of "access of justice":-

"10. The concept of 'access to justice' as an invaluable human right, also recognized in most constitutional democracies as a

fundamental right, has its origin in common law as much as in the Magna Carta. The Magna Carta lays the foundation for the basic right of access to courts in the following words:

"No freeman shall be taken or imprisoned or disseised or outlawed or exiled or in any way ruined, nor will we go or send against him, except by the lawful judgment of his peers or by the law of the land.

To no man will we sell, to no one will we deny or delay right to justice.....".

15. The right to justice is fundamental to international human rights law. The right to justice is recognized under the Universal Declaration of Human Rights(UDHR) through the Article-6: *Everyone has the right to recognition everywhere as a person before the law.*

16. This Court clarifies that citizens have legitimate rights to approach the Court or any forum seeking redressal whether he has a merit or meritless case. It is not for the respondents to curb his right and more so, deter the petitioner by stating dire consequences of recovery of money for the cost of litigation. With this kind of arbitrary and high-handed attitude, the respondents cannot prevent and curb the legitimate rights of a citizen seeking the right to justice. It is for the competent Courts to decide whether the case of a citizen is having merit or it is meritless.

17. In so far as the contention made in the counter affidavit in this regard that the respondents had no intention, cannot be appreciated, and the same cannot be accepted. Whether the respondents had intention or not is not the issue but the fact of the matter is that the words which have been indicated in the letter

dated 27th September, 2022 are surviving till date. The respondents have not taken any pragmatic and cogent thought on the observation made by this Court in its earlier order dated 13.02.2023 and to their wisdom they still stick to their observation made in the letter. Instead of withdrawing the said observation or indicating before this Court that the same is expunged by way of their counter affidavit, they only tried to justify by saying that they have '*no intention*'. This again makes this Court to draw an adverse inference against the conduct of the respondents

18. In view of the same, the present writ petition is allowed setting aside the order dated 27th September, 2022 passed by the respondents and the respondents are directed to pay a cost of Rs.10,000/- to the petitioner.

19. However, it is further made clear that in the event of any settlement of account between both parties, it is always open for them to raise the said demand by providing the proper statement of account and to settle the matter accordingly.

20. With the above observation, the present writ petition is allowed. As a sequel stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

suhanjit

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