

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 179 of 2024

Sri Abhiram Majumder
S/o: Late Dudhbal Majumder
R/o: Nabagram, PO: Airport, Agartala, PIN: 799001

---Appellant(s)

Versus

- 1. The State of Tripura**
To be represented by the Secretary, Department of Home, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, Agartala, West Tripura, PIN: 799010
- 2. The Inspector General of Prisons**
Prisons Directorate, Dhaleswar, Agartala, West Tripura – 799007
- 3. The Superintendent**
Kendriya Sansodhanagar, Bishalgarh, Sepahijala District, Tripura
- 4. The Accountant General**
O/o the Accountant General (A &E), Agartala, Tripura, PIN: 799006

---Respondent(s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. S. Bhattacharjee, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. GA. Mr. N. Majumder, Advocate.
Date of hearing and date of judgment and order	:	01.07.2024.
Whether fit for reporting	:	Yes.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment & Order (Oral)

Heard learned counsel for the parties.

[2] This is a petition under Article 226 of the Constitution of India for seeking the following relief(s):

- (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 like nature shall not be issued whereby directing the respondents to pay interest on Rs.13,07,505/- @ 10% p.a. to the petitioner, for deferred payment of Gratuity and other pensionary benefits w.e.f. the date on which the gratuity and other pensionary benefits becomes payable till the date of payment.*
- (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 like nature shall not be*

issued whereby quashing and cancelling the letter, dated 02.05.2023 issued by the Head of Office, Prisons Directorate, Agartala.

- (iii) *Make the rules absolute.*
- (iv) *Call for records.*
- (v) *Pass any further order/orders as this Hon'ble High Court considered fit and proper.*

[3] It is the case of the petitioner that in contemplation of the departmental proceeding, by order dated 24.10.2016, issued by the Inspector General of Police, the petitioner was placed under suspension in purported exercise of power contemplated under Rule 10(1) of the CCS (CCA) Rules, 1965.

[4] The petitioner further contended that by memorandum, dated, 25.01.2017, issued by the Disciplinary Authority, i.e. the Inspector General of Prisons, Tripura, an inquiry under Rule 14 of the CCS (CCA) Rules, 1965, was initiated against Abhiram Majumdar, i.e., the Petitioner herein and Ashu Kumar Jamatia, Warder. Along with the Memorandum, dated, 25.01.2017 article of charges, imputation of misconduct, list of witnesses and list of documents by whom & by which articles of charges were proposed to be sustained, were annexed.

[5] The sum and substance of the article of charge was, that, Abhiram Majumder, Head Warder, i.e., the Petitioner and Ashu Kumar Jamatia, while they were posted at Kendriya Sangsodhanagar, Bishalgarh, were responsible for the culture of laxity and indiscipline within the Kendriya Sangsodhanagar, Bishalgarh and as a result three convicted life prisoners managed to escape from Kendriya Sangsodhanagar, Bishalgarh by taking advantage of the negligence of the concerned staff on 27.04.2015 at about 7.15pm.

[6] It is submitted by the counsel for the petitioner that by Order, dated, 09.02.2017, issued by the Inspector of Prisons, the order of suspension of the Petitioner was revoked with immediate effect and the Petitioner was allowed to join at his existing place of posting at Kendriya Sangsodhanagar, Bishalgarh.

[7] The Inquiry which was initiated by memo, dated, 25.01.2017 continued till 2022. Moreover the Inquiring Authority by submitting Inquiring report, dated, 11.10.2017 exonerated the Petitioner from the charges framed against him. And it has been specifically held by the Inquiring Authority, that, the Article of charges is not proved. Disciplinary Authority did not issue any letter informing the Petitioner, that, Disciplinary Authority has disagreed with the Inquiry Report with reasons for such disagreement. The Petitioner has not been given any scope by the Disciplinary Authority to submit any representation against the disagreement of the Disciplinary Authority with the Inquiry report. Without following the procedure laid down under Rule 15 of CCS (CCA) Rules, 1965 most arbitrarily the Disciplinary Authority directed fresh inquiry. After such appointment of the Inquiring Authority by memo, dated, 08.05.18, till date the Inquiry is standing still. No progress has been made. There has been undue and unreasonable delay.

[8] On course of the argument, it is represented by the petitioner that he has served one after another representation to the Inspector General of Prisons seeking regular monthly pension, full and final payment of Gratuity and other post retiral benefits. The Petitioner by representations, dated, 20.10.2020, 20.04.2021 & 24.01.2022 sought for release of all pensionary benefits.

[9] Being aggrieved by the unreasonable delay caused by the respondents in providing monthly pension and other pensionary benefits and delay caused in disposal of the disciplinary proceeding initiated against the petitioner, the petitioner filed Writ Petition before the Hon'ble High Court of Tripura Vide WP(C) No. 257/2022. After hearing both the parties the Hon'ble High Court Vide Order, dated, 12.05.2022, passed in WP(C) 257/2022, disposed the writ petition and directed the respondents to complete the departmental proceeding within a period of 6 (Six) months. The Hon'ble High Court further directed to release the gratuity amount, which the petitioner is entitled to for the

service rendered by him, within a period of 2 (two) months. The operative portion of the said Order, is as follows-

"In view of the above, I direct the State-respondents to complete the proceeding within a period of 6 (six) months from today. The respondents shall positively release the gratuity amount, the petitioner is entitled to for the services he rendered to the respondents within a period of 2 (two) months."

[10] Thereafter the petitioner, by letter, dated, 23.02.2022, duly forwarded the Order, dated, 12.05.2022, passed in WP(C) 257/2022, for compliance within the stipulated period prescribed by this Court, by completing the proceeding within 6 (six) months and by releasing the gratuity amount which the petitioner is entitled to.

[11] Thereafter, in compliance to the Order, dated, 12.05.2022, passed by the this Court in WP(C) No. 257/2022, the Disciplinary Authority, Inspector General of Prisons, Tripura, vide Memorandum, dated, 27.07.2022, has completed the disciplinary proceeding against the petitioner by relieving the petitioner from all charges and released all financial benefit which the petitioner was entitled. Even after exonerating the petitioner from all charges the petitioner was not paid with gratuity and regular monthly pension which he was entitled within one month of his retirement.

[12] Thereafter, the petitioner, through proper channel submitted detailed representation, dated, 28.02.2023, to the Inspector General of Prisons. In the representation, the petitioner earnestly urged upon the Respondent no. 2 to provide statutory interest on the amount of gratuity and pensionary benefits @ 10% p.a w.e.f. the date on which the financial benefits became payable till the date of actual payment.

[13] Finding no alternative, the petitioner approached this Court by filing WP(C) 202/2023, to pay interest @ 10% p.a to the petitioner for deferred payment of gratuity and other pensionary benefits w.e.f., the date on which gratuity and other pensionary benefits became payable till date of actual payment.

[14] This Court, by Order, dated, 10.04.2023, directed the respondents to consider the representation, dated, 28.02.2023, submitted by the petitioner within a period

of 3 months from the date of Order. The Head of Office, Prison Directorate, issued letter, dated, 02.05.2023 by which it was made known to the petitioner, that, as per Rule 65(1) (c) of Central Civil Service (Pension) Rules, 1972, payment of statutory interest on the amount of Gratuity and other pensionary benefits @ 10% p.a, w.e.f., the date on which the financial benefit became payable till the date of actual payment, is not tenable. Accordingly the Petitioner is not entitled to any interest against Gratuity and other pensionary benefits as claimed.

[15] It is evident from the record that the petitioner has received Rs. 2,38,961/- & Rs. 79,654/- as payment of gratuity on 20.08.2022 & 10.01.2023 respectively, which he was entitled to get within one month of his retirement from service, i.e. within 01.05.2017.

[16] On 06.01.2023, the petitioner was provided Rs. 63,245/- and on 19.12.2022, the petitioner was provided with Rs. 26 ,669/-, 26 ,669/- 6 ,353/- 4,08,408/-, 4,54,635/- & Rs 2 ,911/- 19(th) December, 2022, as pension arrear for the months of October, November, December, 2022. In total the Petitioner was paid Rs. 13,07,505/- as his arrear pension and gratuity.

[17] The Petitioner became entitled to interest @ 10% per annum on Gratuity w.e.f. one month after the date of retirement from service on superannuation till full and final payment is made. In this regard, it is necessary to mention, that, vide Notification No. F.8(13) Fin(G)/86, dated, 08.04.1997, issued by the Joint Secretary to the Govt. of Tripura, Finance Department, it was notified, that, in the event of delay in payment of gratuity, interest should be paid. This is in addition to the statutory prescription of payment of interest.

[18] It is contended by the counsel for the petitioner that the payment of Pension and Gratuity can be withheld in terms of Rule 9(1) of CCS (Pension)Rules, 1972, if a govt. employee is found guilty of grave misconduct or negligence in a departmental

proceeding, or judicial proceeding. Then only his pension/ gratuity or both, either in full or in part can be withhold permanently or for specified period.

[19] Since the petitioner retired w.e.f. 31.03.2017, the petitioner became entitled to full and final payment of gratuity and other pensionary benefits within 30 days from the date of retirement from service. But, gratuity and other pensionary benefits were provided in the month of December, 2022 without interest for delayed/ deferred payment as a result, the Petitioner suffered financial loss and hardship.

[20] The Section 7(3) of the Payment of Gratuity Act, 1972, makes it compulsory and mandatory for the Employers, to pay the amount of Gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable. If the amount of Gratuity payable under Section 7(3) is not paid by the Employer within the period specified, the employer would be required to pay from the date on which the gratuity becomes payable to the date on which it is paid, simple interest at such rates, not exceeding the rate notified by the Central Government from time to time for repayment of long-term deposits, as that Government may, by notification specify.

[21] It is well established law, that, if gratuity and other pensionary benefits are withheld or delay is caused in payment of such gratuity and other pensionary benefits, interest is to be paid from the date of entitlement till the date of actual payment, as has been held by the Hon'ble Supreme Court in ***D.D Tewari (Dead) Through Legal representatives Vs. Uttar Haryana Bijli Vitaran Nigam Limited and Others reported in (2014)8SCC 894.***

[22] The pension is the property of the petitioner and it is not bounty but accrued right. It is the mandate of the law that, regular monthly pension and other pensionary benefits are to be sanctioned and released within a month of retirement. But due to the pendency of the disciplinary proceeding against the petitioner for about 5 years, most arbitrarily the petitioner has not been sanctioned pensionary benefits within time for

which the petitioner has suffered severely. The petitioner is entitled to interest @ 10% per annum on the amount of gratuity and all other pensionary benefits.

[23] Though the petitioner has received his gratuity and other pensionary benefits but he has not been paid any interest for the delay caused in payment of gratuity and other pensionary benefits.

[24] On the other hand, Mr. M. Debbarma, learned Addl. GA appearing for the state-respondent has submitted before this court that as per provision as given under Rule (4)(C) of the CCS (Pension) Rule 1972, where it mention that “No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon” the gratuity of the petitioner was withheld till conclusion of the proceedings.

[25] On the last occasion when this court asked learned Addl. GA for the state as to why the respondents cannot pay statutory interest on the amount of Gratuity & all other financial & pensionary benefits @ 10% per annum w.e.f. the date on which the financial benefits became payable till the date of actual payment. To which learned government advocate has no answer. Moreover, it is also evident from the record that in pursuant to the order passed in WP(C) 257 of 2022, the Disciplinary Authority, Inspector General of Prisons vide memorandum dated 27.07.2022 has completed the disciplinary proceeding against the petitioner by relieving him from all charges and released all financial benefits which the petitioner was entitled. When a person is found not guilty against the charges framed against him then under no provision he can be deprived of getting what is due to him. Though in the present case, the petitioner has admittedly received his gratuity and other pensionary benefits but he has not been paid any interest for the delay caused in payment of gratuity and other pensionary benefits. Since the petitioner has got the clean chit from his inquiring authority against the charges framed

against him, the respondents shall pay interest for the delay caused in payment of gratuity and other pensionary benefits.

[26] Having considered the submission as advanced by the learned counsel for the parties, this court is of the view that the petitioner is entitled to the relief sought for and the writ petition is liable to be allowed.

[27] Accordingly, the writ petition is allowed setting aside the impugned letter dated 02.05.2023 of the respondents in denying the interest to the petitioner. This Court finds that the petitioner is entitled to the interest and directs the respondents to pay the interest @10% per annum from the date his retirement benefit fell due till the realization or within three months from the date of receipt of copy of this order, whichever is earlier.

[28] With the above observation and direction, this present writ petition stands allowed and thus disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.



JUDGE