

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.194/2024**

Mousumi Bhattacharjee & another
..... Petitioner(s).
V E R S U S
The State of Tripura & others
.....Respondent(s).

For Petitioner(s)	: Mr. Koomar Chakraborty, Advocate, Mr. Dipjyoti Paul, Advocate.
For Respondent(s)	: Mr. Kohinoor N Bhattacharyya, G.A., Mr. C.S. Sinha, Advocate, Mr. D.C. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/07/2024

Heard Mr. Koomar Chakraborty, learned counsel appearing for the petitioners, Mr. Kohinoor N Bhattacharyya, learned Government Advocate appearing for the State respondents No.1 & 2 and Mr. C.S. Sinha, learned counsel appearing for the respondents No.3 & 4-State Co-operative Marketing Federation of Tripura Limited (Tripura Markfed, for short).

2. Both petitioners were engaged on contingent basis in the Tripura Markfed on 11.01.1993 and 20.06.2001. Both were regularized on the post of Junior Assistant on 28.12.2012. On the basis of their representation made on 01.11.2019 (Annexure-5), the Board of Directors resolved to grant them the benefit of two increments on their initial scale of pay. The two increments were fixed notionally from the initial scale of pay, i.e. 2012 and the financial benefits were conferred from 01.11.2019. Board of Directors meeting was held on 01.07.2020. Subsequently, by memorandum dated 17.02.2024 (Annexure-11) the pay of the petitioners has been reduced from Rs.34,100/- to Rs.31,400/-

w.e.f. 01.07.2023. This was pursuant to the meeting of the Board of Directors held on 19.01.2024. This aggrieved the petitioners to approach the Court. This memorandum dated 17.02.2024 at page-2 states that on the basis of the above re-fixation of pay, the arrear pay and allowances for the period 01.04.2017 to 31.01.2024 should be drawn and disbursed to both the Junior Assistants/ petitioners subject to adjustment of previous withdrawal. Pursuant to this reduction of pay, learned counsel for the petitioners submits that recovery has also been made. Petitioners have pleaded that the benefit of two increments have been granted to them on the basis of their past experience in conformity with Rule 24 of the Service Rules.

3. Respondents No.3 & 4 have relied upon Rule 24 and the audit report referred to in their additional counter affidavit which states that excess amount paid to the staff in their salary bills like two increments as shown in the accounts and reports are to be adjusted as it was illegal. It says it is not in accordance with the Rule 24 of the Service Rules. On 01.02.2024 the Board of Directors resolved that the increments given to the employees are unlawful and the amount paid to them should be recovered. Copy of the letter dated 21.06.2024 along with Audit Report for the year 2021-22 is enclosed as Annexure-1 to the additional counter affidavit. The whole issue, therefore, revolves around whether conferment of additional increment in terms of Rule 24 by the conscious decision of the Board of Directors in its meeting held on 01.07.2020 was proper or not. Rule 24 is quoted from Annexure-4 as under:

"24. Normally an employee shall start during his/her salary from the start of the time scale of pay but in consideration of special qualification, expertisations, previous experience etc., an employee may be granted higher initial pay to start within the time-scale of pay at the time of recruitment, at the discretion of the Board, not exceeding 2(two) advance increments."

4. Representation of the petitioners dated 01.11.2019 is at Annexure-5. They have further made a representation after the start of reduction of pay on 23.02.2024. After 7(seven) years of their regularization, petitioners contended that on account of their satisfactory qualification and the responsible duties provided by the management, they have discharged the same with full satisfaction of themselves as well as to the satisfaction of the management. Therefore, they should be granted the benefit of two advance increments from their initial scale of pay to minimize the great losses in their service life. The representation, therefore, does not stake a claim on any of the grounds for grant of two advance increments at the time of their recruitment, i.e. special qualification; expertisation, previous experience etc. Though during course of submission, learned counsel for the petitioners has harped upon the ground of previous experience, i.e. past experience served under the Markfed during their period of engagement on contingent basis from 11.01.1993 and 20.06.2001 respectively before their regularization on 28.12.2012, but learned counsel for the respondents has countered the said plea on the ground that petitioners have not claimed any special qualification at the time of recruitment nor any expertisation. Previous experience. or past experience etc can only be claimed for having served in any other organization. Their engagement on contingent basis in the same organization which led to their regularization could not become a basis for claiming two increments on the ground of previous experience. In any case, the Board of Directors by a conscious decision have rectified their decision in granting two advance increments and the audit report also has commented upon illegal grant of two increments to the petitioners.

5. Learned counsel for the respondents, therefore, submits that grant of two advance increments, that too after 8 years of their regularization and without any specific claim of special qualification, expertisation or previous experience is not tenable in law or on facts to challenge the impugned decisions. However, learned counsel for the respondents does not dispute the position settled by the Apex Court in the case of *State of Punjab & others vrs. Rafiq Masih (White Washer) & others* reported in (2015) 4 SCC 334, regarding recovery to be made for excess payment made to the Group-C and Group-D employees in the absence of any misrepresentation on their part. Learned counsel for the respondents submits that the re-fixation of pay by reducing the two increments as calculated from the initial scale of pay notionally and then w.e.f. 11.01.2019, is proper and the reduction of pay resulting thereof should not be interfered. Recovery has been stopped due to the interim order passed by this Court in the present writ petition.

6. I have considered the submissions of learned counsel for the parties and also taken note of the relevant Rule 24 of the Service Rules which has been extracted hereinabove. I have also taken note of the representation of the petitioners dated 01.11.2019 which does not make out a case for special qualification, expertisation or previous experience etc. for seeking two advance increments on initial scale of pay. They only plead discharge of their responsibilities to the satisfaction of the management for seeking such two advance increments.

7. A plain reading of Rule 24 of the Service Rules does indicate that on consideration of special qualification, expertisation, previous experience etc., two advance increments can be granted to an employee in the initial pay at

the time of recruitment. Surprisingly, even if the petitioners had any such claim they have raised it after 7 years of their regularization vide representation dated 01.11.2019. The Board of Directors, however, thought to grant such benefit in their meeting vide their resolution dated 01.07.2020 and petitioners got the financial benefits of these two advance increments prospectively from 01.11.2019 whereas their pay was fixed notionally on the initial scale of pay. However, since these two increments are permissible to be given at the initial scale of pay at the time of recruitment only on satisfaction of any of the enumerated conditions, such as special qualification, expertisation, previous experience, the audit was right in pointing out that they have been illegally granted. Resultantly, the Board of Directors have in their subsequent meeting also resolved to reduce the pay of the petitioners by excluding those two increments. As such, the reduction of pay of the petitioners by excluding those two increments cannot be faulted in the eye of law. However, any payment made on the basis of the decision of the Board of Directors in its meeting held on 01.07.2020 as against these two increments in favour of the petitioners should not be recovered at this point of time as there was no misrepresentation or fraud committed by the petitioners. Petitioners are otherwise Group-C employees and such a course would entail undue hardship.

8. The writ petition is allowed partly interfering in the decision of recovery of the amount paid against two advance increments to the petitioners but without any interference in the reduction of pay of the petitioners.

Any amount recovered pursuant to the impugned decision should be refunded to the petitioners.

9. With the aforesaid observations, the writ petition is partly allowed and disposed of.

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

(APARESH KUMAR SINGH), CJ

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