

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.324 of 2023

Smt. Sabita Saha Nayar

....Petitioner(s)

Versus

The State of Tripura and 3 Ors.

....Respondent(s)

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate
For the Respondent(s)	:	Mr. M. Debbarma, Addl. GA

HON'BLE MR. JUSTICE ARINDAM LODH

Order

02/04/2024

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. GA appearing for the respondents-State.

By means of filing the instant writ petition, the petitioner has prayed for following reliefs:

- i. *Issue Rule, calling upon the official respondents and each one of them, to show cause as to why a writ of Certiorari and/or in the nature thereof, shall not be issued for mandating the respondents, to transmit the records, relevant to the subject matter of this writ petition, for rendering substantive and conscionable justice to the petitioner, and for quashing/setting aside the impugned Orders dated 17.12.2022, 24.01.2023 & 23.03.2023 (Annexures-4, 5 & 6 respectively infra);*
- ii. *Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, for mandating/directing the respondents, to revoke/rescind the impugned Orders dated 17.12.2022, 24.01.2023 & 23.03.2023 (Annexures-4, 5 & 6 respectively infra), and further, for mandating/directing them, to allow the petitioner to continue in Government service till 01.02.2026;*

- iii. *Issue Rule, calling upon the respondents and each one of them, to show cause as to why a Writ of Prohibition and/or in the nature thereof, shall not be issued, for restraining/prohibiting the respondents, from acting in any manner, in furtherance of the impugned Orders dated 17.12.2022, 24.01.2023 & 23.03.2023 (Annexures-4, 5 & 6 respectively infra);*
- iv. *In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order, in terms of relief iii supra;*
- v. *Call for the records appertaining to this petition;*
- vi. *After hearing the parties, be pleased to make the Rule Absolute in terms of i. & ii. above;*
- vii. *Costs of and incidental to this proceeding;*
- viii. *Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"*

It is submitted that the Date of Birth(DOB) of the petitioner has wrongly been recorded. It was detected that the actual DOB of the petitioner was 01.02.1960, but her DOB was recorded in the Service Book as on 01.02.1966. Due to such wrong recording of DOB, the petitioner has served in the post of GDA at IGM Hospital, Agartala w.e.f. 01.02.2020 to 28.02.2023 and also has drawn salary amounting to Rs.13,35,099/- although she was supposed to retire from service w.e.f. the afternoon of 31.01.2020.

Having detected the same, the respondents vide communication dated 23.03.2022 directed the petitioner to refund an excess amount of Rs.13,35,099/- paid to her as salary.

It is the case of the petitioner that there was no wrong recording of DOB in the Service Book of the petitioner and it is also admitted fact that the petitioner has served the respondents for the period for which the respondents have demanded the refund of the salary she received during that period.

The petitioner is a Group-D employee and it is an admitted fact that she had served the department for the period for which she was asked to refund the salary paid to her.

Keeping in mind the principle laid down in the case of ***State of Punjab & Ors. vs. Rafiq Masih(White Washer) & Ors***, reported in (2015) 4 SCC 334, the petitioner being a Group-D employee should not be asked to

refund her salary. Moreso, it is an admitted position that the petitioner discharged her duties for the period w.e.f. 01.02.2020 to 28.02.2023 considering her DOB as on 01.02.1966.

In view of this, the communication dated 23.03.2023 for recovery of the excess amount of salary is hereby set aside and quashed.

The instant writ petition stands disposed accordingly.

JUDGE

Snigdha

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KAR

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