

**HIGH COURT OF TRIPURA
AGARTALA**

WA No.82 of 2023

The State of Tripura & others

.....Appellant(s);

Versus

Sri Ratan Bhowmik & another

.....Respondent(s).

For Appellant(s) : Mr. D. Sharma, Addl. G.A.

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI,
Mrs. S. Deb (Gupta), Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE S.D. PURKAYASTHA**

Order

28/05/2024

Heard Mr. D. Sharma, learned Additional Government Advocate for the appellants-State and Mrs. S. Deb (Gupta), learned counsel for the respondent No.1. Also heard Mr. Bidyut Majumder, learned Deputy SGI for the respondent No.2-The Accountant General (A & E), Tripura.

2. The State is in appeal against the impugned judgment and order dated 03.05.2023 passed in WP(C) No.1047 of 2022 whereby the respondents have been directed in the following terms:

“6. Having heard both sides this court directed the respondents to release the amount which has been miscalculated at the time of issuance of PPO on 09.11.2022 has given a recovery details where it reveals that the recovery amount is Rs.4,32,047/- for pay and allowances overdrawn and Rs.37,000/- for leave salary overdrawn. The respondent No.4 miscalculating the pay and allowances by giving effect of CAS-I from 01.01.2000 instead of 01.01.1999 assessed the aforesaid amount of Rs.4,32,047/- + Rs.37,000/- =Rs.4,69,047- which is liable to be rectified and which was withheld. Since the said amount falls under the terminal benefits, they cannot be attached pertains to that retirement benefits of the petitioner as decided by the Hon'ble Supreme Court of India in many cases. Accordingly, the same be released in favour of the petitioner by recalculation. In so far as any other further relief is concerned, the petitioner is given liberty to represent the matter before the concerned respondents.

With the above observation and direction, the writ petition stands disposed of.”

3. Writ petition was filed with the following prayers:

- “i) Admit the petition;
- ii) Call for the records from the custody of the respondents;
- iii) As to why a writ of certiorari shall not be issued to set aside the communication along with the calculation sheet vide no.F.6(13)-

PWD(GE)/2018(S-1)/20736-38 dated 09.03.2022 issued by respondent No.1 and communication vide no.F.2(18)-EE/Rig/Div./Estt./09/1199-1202 dated 04.08.2022 issued by respondent No.4;

iv) As to why a writ of Mandamus shall not be issued directing the respondents to recalculate the last pay and leave salary;

v) As to why a writ of Mandamus shall not be issued directing the respondents to recalculate the financial calculation under CAS-I which would be applicable w.e.f. 01.01.1999 as per Rule 10(d) of Tripura State Civil Service (Revised Pay), 1999 after completion of eight years of service as TES Grade V(A) (Cadre Service);

vi) As to why a writ of Mandamus shall not be issued directing the respondents to refund the amount along with interest which is wrongly deducted from the gratuity and other pensionary benefit of the petitioner;

vii) As to why a writ of Mandamus shall not be issued directing the respondents to recalculate the due drawn statement and fix the pension of the petitioner on the basis of last basic pay amounting to Rs.1,27,042/- and also give direction to recalculate the leave salary of the petitioner on that basis;

viii) As to why a writ of certiorari shall not be issued quashing the PPO vide no. PEN-2/AGARTALA-1/1222044437/17/P/22/12/60042863 dated 09.11.2022 issued by Respondent No.5 and direct the Respondent No.5 to issue new PPO by correcting the amount of Basic Pay in light of Tripura State Civil Service (Revised Pay), 1999 and remove the recovery amount amounting to Rs.4,32,047/- for pay and allowances overdrawn and Rs.37,000/- for leave salary overdrawn.”

4. The writ petitioner had asserted that he was engaged as a Junior Engineer (Mechanical) under TES Grade-V(A) (Mech) Degree Holder under the Public Works Department, Government of Tripura in the scale of pay of Rs.2000-4410/- as per office order No.F.2(2)PWD(E)/79 dated 27.03.1990. Vide memo dated 07.12.1992 issued by the Appellant No.2, his pay scale was revised to Rs.2100-4530 under the TES Rules with effect from 01.04.1993. He completed eight years of service as TES Grade-V(A) on 17.05.1998. As per the Tripura State Civil Services (Revised Pay) Rules, 1999, petitioner was granted the revised scale of Rs.10000-15100/-. According to the said ROP of 1999, the employees of Cadre service have scale advancement under CAS-I with effect from 01.01.1999. Petitioner superannuated on 31.12.2020 as Assistant Engineer (Mechanical) (TES Grade-IV). A pension proposal was sent by Appellant No.4 to the Accountant General on 30.01.2021. Thereafter, proforma Respondent No.2–The Account General (A&E), Tripura sent a letter to respondent No.4 i.e. the Executive Engineer, Rig Division, P.N. Complex, Gurkhabasti regarding miscalculation of his pay and for the purposes of fixation of pension. On

05.04.2021, petitioner made a request to Appellant No.4 with a copy to proforma respondent No.5 to review the pay fixation for finalization of his pension proposal. However, the respondents have re-fixed his pay in the scale of Rs.10000-15100/- with effect from 01.04.2000 instead of 01.01.1999 to which petitioner was entitled as per Rule 10(d) of the Tripura State Civil Services (Revised Pay) Rules, 1999 on completion of eight years of service. The respondents contested the plea by filing a Counter Affidavit. The learned Writ Court, on being satisfied with the plea, directed the respondent No.4 to release the retirement benefits to the petitioner by giving effect of CAS-I from the due date i.e. 01.01.1999 and further held that no recovery can be made for the amount allegedly paid in excess and accordingly directed for its release. Being aggrieved, the respondents-State are in appeal.

5. We have considered the submission of learned counsel for the parties.

6. On being specifically asked, learned Additional Government Advocate for the appellants-State Mr. D. Sharma has not been able to point out from the records that any opportunity to show cause was given to the petitioner before re-fixation of his pay after his retirement from a date i.e. 01.04.2000 instead of 01.01.1999. This fact is also asserted by learned counsel for the writ petitioner. Needless to say that any re-fixation of pay after superannuation which entails reduction in his pay scale and admissible allowance leading to adverse consequences should have been done after giving an opportunity to show cause. The learned Writ Court has however straightaway directed the amount to be paid treating his pay fixation with effect from 01.01.1999 as was earlier done instead of 01.04.2000, which according to the appellants-State is in contrary to 7th Amendment of the TSCS Rules, 1999.

7. Having regard to the aforesaid facts and circumstances and for the reasons recorded hereinabove, we are of the considered view that appellant-employer, on being pointed out by the office of Account General about wrong fixation of pay of the petitioner/respondent No.1 herein with effect from 01.04.2000 instead of 01.01.1999, ought to have given an opportunity to the petitioner to show case as to why the proposed re-fixation of pay is not justified in law as well as on facts. However, it appears that without any show cause notice, the employer has taken a decision of re-fixation of pay with effect from 01.04.2000 under CAS-I instead of 01.01.1999. In such circumstances, at this stage, this Court feels it proper to direct the competent authority under the appellant-department to give a show cause notice to the petitioner to reply as to why such re-fixation should not be done. The competent authority/sanctioning authority, after consideration of his reply to be submitted within 15 days thereafter, would take a decision in accordance with law and communicate the same to the office of the Accountant General for re-fixation of pay, if any. Needless to say, if the writ petitioner is aggrieved by the said decision, he may have liberty to raise his grievances in an appropriate proceeding. The directions passed by the learned Writ Court are accordingly set aside. The appeal is allowed in the manner and to the extent indicated above.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ

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