

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No. 505 of 2023**

Sri Arjun Kumar Saha
S/o Ramani Mohan Saha
R/o Milan Sangha, Dayamoy
Ashram Road, P.O. & P.S: A.D.
Nagar, Agartala, District-West Tripura,
PIN-799003, Age-61 years

.....Petitioner(s)

Vs.

- 1. Tripura Jute Mills Limited,**
A Govt. of Tripura Undertaking
(to be represented by the
Managing Director, Tripura
Jute Mills Limited, Hapania,
P.O: O.N.G.C, Agartala, PIN-799014)

- 2. The Managing Director,**
Tripura Jute Mills Limited,
Hapania, P.O: O.N.G.C,
Agartala, PIN-.799014

- 3. The State of Tripura,**
to be represented by the Secretary,
Department of Industries and Commerce,
Govt. of Tripura, New Secretariat
Complex, Agartala, West Tripura,
PIN-799010

- 4. The Director of Industries**
and Commerce, Govt. of Tripura,
Gurkhabasti, Agartala, West Tripura,
PIN-799006

.... Respondent(s)

For Petitioner(s)	:	Mr. P Roy Barman, Sr. Adv. Mr. D Paul, Adv.
For Respondent(s)	:	Mr. M Debbarma, Addl. GA. Mr. P Gautam, Adv.
Date of hearing	:	4th March, 2024.
Date of delivery of Judgment	:	23rd April, 2024
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE S.D. PURKAYASTHA

JUDGMENT & ORDER

The petitioner was appointed as Lower Division Clerk under the respondent No.1 on 06.05.1985 and he went on superannuation on 31.12.2021. During his service tenure he also worked in the Department of Tripura Minorities Cooperative Development Corporation on deputation for the period from 19.11.1999 to 15.06.2021. On his retirement, as per provision of Payment of Gratuity Act, 1972 he was entitled to receive the gratuity to the tune of Rs.9,56,414/- as was finally assessed by the respondent No.1, but, he was paid only Rs.7,39,830/- by cheque dated 11.04.2022 and rest amount of Rs.2,16,584/- was deducted by the department on the ground that as per audited annual accounts of Tripura Jute Mill Limited for the financial year 2020-2021 conducted by the office of the Accountant General Rs.2,16,584/- was found lying unadjusted against the petitioner out of which Rs.2,13,634/- was lying in suspense account and Rs.2,950/- remained unadjusted which was paid to him for payment of advance to the other staff.

2. By letter dated 12.02.2022 (Annexure-2 of the writ petition) the petitioner was asked by the Accounts Officer of respondent No.1 to submit expenditure report with vouchers/adjustments against the said advance within a period of 15 days from the date of issue of notice and in turn the petitioner

submitted his reply dated 25.02.2022 (Annexure-3 of the writ petition) requesting the respondent No.2 to furnish him the date and year wise disbursement report for the said unadjusted amount and to give him a scope to clarify the total matter about the said unadjusted amount.

3. According to the petitioner, he already went on retirement and the matter of said unadjusted amount was unknown to him. He also stated that on some occasion he had disbursed the salary by receiving the money from the cash section of the Jute Mill and after disbursement he had duly submitted the salary bill sheet with proper signatures of the workers and accordingly the amount was duly adjusted on each occasion. But the petitioner was not furnished with the full particulars of such disbursement report as was requested by him by said letter dated 25.02.2022 and without giving him adequate opportunity to make response to the allegation, the said amount of Rs.2,16,584/- was illegally deducted from the gratuity. Thereafter, he sent a notice dated 28.04.2022 (Annexure-5 of the writ petition) through his advocate to respondent Nos.2 and 4 requesting them to refund his deducted amount of gratuity, else he would take necessary legal recourse against them.

4. The notice got no response from them and the petitioner then filed WP(C) No.509/2022 in this court and the said petition was disposed of by a co-ordinate Bench vide order dated 16.05.2023 with the following direction:-

"3. It is seen from the record that the vide notice dated 12.02.2022, issued by Accounts Officer, TJML, the petitioner herein was asked to submit expenditure report along with vouchers/adjustments. The petitioner herein has submitted his documents with explanation as required on 25.02.2022 but the matter is still pending. In view of the same, without expressing any opinion on its merit, this present writ petition is disposed of with a direction upon the respondents to consider the case of the petitioner within a period of 3(three) months from the date of receipt of the copy of this order."

5. In view of above said direction of this court, the respondent No.2 issued a letter dated 10.07.2023 (Annexure-9 of the writ petition) reiterating the above said facts but without furnishing the required documents as were sought by the petitioner and further stating that as the petitioner had failed to submit any authentic paper/document against adjustment of long pending unadjusted advance amount of Rs.2,16,584/- the said amount was deducted from his gratuity. The letter of the petitioner dated 25.02.2022 was disposed of in this way by respondent No.2.

6. Thereafter, being aggrieved thereby the petitioner has filed the present writ petition seeking following reliefs:

"I. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders, direction/directions of like nature shall not be issued whereby directing the Respondents to pay interest @7% per annum for deferred payment of gratuity amount of Rs.7,39,830/- w.e.f. 01.02.2022 to 19.04.2022.

ii. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders, direction/directions of like nature shall not be issued whereby quashing the Notice, dated, 12.02.2022, issued by the Accounts Officer, TJML.

iii. Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders, direction/directions of like nature shall not be issued whereby quashing and

cancelling the letter, dated, 10.07.2023, issued by the Managing Director, Tripura Jute Mills Ltd.

iv. Call for the records pertaining to the instant Writ Petition from the custody of the Respondents.

v. Make the Rules absolute after hearing the Parties Pass any other order/orders as this Hon'ble High Court may consider fit and proper."

7. Mr. P Roy Barman, learned Sr. counsel for the petitioner contended that in view of the Section 13 of the Payment of Gratuity Act, 1982, any such deduction from the amount of gratuity was not permissible. Learned Sr. counsel also argued that the matter of so called adjustment was of the year 1994 and 1995 but till retirement of the petitioner the department did not agitate the issue and after his retirement they had suddenly come up with such demand which had no legal basis and according to learned Sr. counsel, even the petitioner was not given opportunity to scrutinize the matter and to give proper explanation, if any, for the same. Learned Sr. counsel also relied on a decision of a co-ordinate Bench of this court passed in **Mr. Lala Darlong vs. Tripura Gramin Bank & ors.** in **WP(C) No.712/2017** decided on 25.09.2008 to bolster his submission.

8. Learned counsel of the respondent Nos. 1 & 2 Mr. P Gautam, submitted a short written note of his argument and also contended that the said amount of Rs.2,16,854/- was lying unadjusted on the part of the petitioner which was public money, and therefore, same could not be allowed to be drained out.

9. According to Mr. Gautam, learned counsel after the said matter was detected in the annual accounts of the Jute Mill, the

notice was duly sent to the petitioner but he failed to give any sort of explanation for the same, and therefore, the said amount was deducted from his gratuity. Learned counsel Mr. Gautam has also relied on a office memorandum bearing No.28/91/2022-P&PW(B)(1) dated 20.10.2023 issued by the Department of Pension and Pensioners' Welfare, Ministry of Personnel, Public Grievances and Pensions, Government of India whereby the Under Secretary to the Government of India in view of Rule 67 of the Central Civil Services (Pension) Rules 2021 requested all the Ministries and Departments to ascertain the dues payable by a government servant due for retirement on superannuation and to adjust the same against the amount of the gratuity as payable to the said government servant. In reply thereto, Mr. Roy Barman, learned Sr. counsel argued that Central Civil Services (Pension) Rules 2021 had no application in Tripura and therefore the said memorandum was irrelevant for the purpose of this case.

10. In view of the submissions and counter-submissions as made by the learned counsel of the both sides and the pleadings of the parties, the questions that arise for decision in this case are- i) whether deduction of any Govt. dues payable by a government servant to the Department, from his gratuity is permissible and ii) whether proper opportunity was provided to the petitioner to either submit his adjustment of the dues or to explain the reason of such non-submission, before such amount was deducted from his gratuity amount.

11. The relevant provision regarding the protection of gratuity of a government employee as enumerated in Section 13 of the Payment of Gratuity Act, 1972 reads as under:-

13. Protection of gratuity- No gratuity payable under this Act [and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5] shall be liable to attachment in execution of any decree or order of any civil, revenue or criminal court.

12. This provision, as it appears on its plain reading, prohibits attachment of any gratuity payable under this Act or any gratuity payable to an employee in any establishment, factory, mine, coalfield, plantation, port, railway company or shop as exempted under section 5 of the Act, in execution of any decree or order of any civil, revenue or criminal court. Therefore, such protection against such attachment has been restricted by the law makers only in respect of any execution of any decree or order of any such court. But such prohibition has not been extended in the matter of adjustment/recovery of any Govt. dues payable by an employee to their department. Therefore, the petitioner cannot claim any such protection with the aid of Section 13 of the Act.

13. In the case of said ***Lala Darlong (supra)*** as relied on by learned Sr. counsel Mr. Roy Barman, this court also observed that Section 13 of the Act might not have any direct bearing in the said case inasmuch as the said provision created prohibition against the court from execution of the decree against the amount of gratuity. In that case, the petitioner was an employee of Tripura

Gramin Bank and forfeiture of gratuity in case of such bank employee was not permissible in case of dismissal from the service on account of any misconduct except in cases where such misconduct caused financial loss to the Bank and in that case too, such forfeiture was permissible to that extent only, as per Regulation 69 of Tripura Gramin Bank (Officers and Employees) Service Regulation Act, 2001 and based on above said regulation, the respondents in that case were directed not to recover the outstanding amount of the loan from the gratuity as they had other remedies available for recovery of the same. Thus, the said decision is of no aid to the petitioner in the instant case.

14. Recently, in the ***Steel Authority of India Limited vs. Raghbendra Singh & Ors.***, reported in **(2021) 18 SCC 272** the Hon'ble Supreme court observed that penal rent for occupying the quarters beyond the specified period can be adjusted against the dues payable to the employee including his gratuity. Reference of another judgment of Hon'ble Apex Court rendered in ***Secy., ONGC Ltd. v. V.U. Warriar*, (2005) 5 SCC 245** was made therein and one of the relevant paragraphs is extracted below:

21. In Jarnail Singh v. Secy., Ministry of Home Affairs [(1993) 1 SCC 47 : 1993 SCC (L&S) 119 : (1993) 23 ATC 642] this Court had occasion to consider the provisions of the Central Civil Services (Pension) Rules, 1972. The definition of "pension" included gratuity under Rule 3. Rule 9 conferred on the President right to withhold or withdraw pension in certain circumstances. The order was passed against the appellant withholding pension and the entire amount of death-cum-retirement gratuity otherwise admissible to him. The direction was given on serious irregularities found to have been committed by the appellant. The appellant challenged that order unsuccessfully before the Central Administrative Tribunal. He, therefore, approached

this Court. His contention was that an amount of gratuity could not have been withheld. Negating the contention, the Court held that the power to withhold gratuity was conferred on the President under the relevant rules and hence, such action could not be said to be illegal. According to the Court, there could be adjustment of government dues against the amount of death-cum-retirement gratuity payable to government servant.

In view of above there is no bar regarding recovery of any outstanding amount/dues from the amount of gratuity payable to the petitioner by the respondent Nos.1 & 2. The Point no.1 is decided accordingly.

15. The basic allegation against the petitioner is of non-submission of adjustment in respect of Rs.2,16,584/-. From the Annexure-R(9) and R(10) of the counter affidavit of respondent Nos.1 & 2, it appears that in the list of suspense account as on 31.03.1994 an amount of Rs.2,13,747.53 is shown against the name of the petitioner and in the list of advance to the staff as on 31.03.1995, an amount of Rs.1200/- is reflected against the name of the petitioner. But the above said documents or other documents as submitted from the side of respondent nos. 1 & 2, do not reflect the detailed particulars based on which such amounts were shown against the name of the petitioner. Despite the specific requests made by the petitioner to respondent no.2 vide his letter dated 25.02.2022, the date and year wise payment disbursement report of such unadjusted dues were also not furnished to him.

16. The matter was very old one and till the year 2022 the respondent Nos. 1 & 2 remained silent and did not take any action

in this regard, unless same was detected by the Audit Authority, which is no doubt a lapse on their part. It is also very natural for a person to forget a matter relating to the year 1994 and 1995, more particularly when he has gone on retirement on 31.12.2021 and he has no longer any access to the official documents. Unless sufficient particulars and necessary facts relating to such unadjusted amount are provided to him giving him reasonable opportunity to either submit the adjustment or to offer explanation for non-submission of the same, deduction of any such amount from his gratuity or from other post retirement benefits will be inequitable, harsh and violation of natural justice. Even no notice except the notice dated 12.2.2022 asking him to submit the adjustment report was also issued to the petitioner giving him scope to submit his explanation before such deduction was made from gratuity. Point No. 2 is decided accordingly in favour of the petitioner.

17. In view of above, the writ petition is disposed of with the following directions:

i) The respondent Nos. 1 & 2 shall furnish detailed particulars of the unadjusted amount to the petitioner including the copies of the document(s) as sought by him vide his letter dated 25.02.2022 (Annexure 3 of the writ petition) and also any other available document(s) as required by the petitioner, within four weeks from the receipt of this order enabling the petitioner

either to submit proper adjustment thereof or to submit his explanation, if any, in this regard.

ii) If the adjustment/explanation, if any, is duly submitted by the petitioner to the satisfaction of respondent nos.1 & 2 within four weeks from receipt of said required document(s), the respondent No.1 & 2 will immediately release the deducted amount of gratuity of Rs.2,16,584/- to the petitioner within further four weeks from the date of receipt of such explanation or adjustments, alongwith interest thereupon @7% per annum computing from the date after expiry of 30 days of his retirement till payment is made.

iii) Failure on the part of the petitioner to submit proper adjustment of the said amount or to give proper explanation for non-submission of such adjustment within the aforesaid period as stipulated, such deduction of Rs.2,16,584/- shall be treated to be valid.

iv) The petitioner will have the liberty to approach proper forum again in respect of any further grievance(s) in relation to this matter in issue.

The writ petition is disposed of accordingly with above said directions.

Pending applications, if any, also stand(s) disposed of.

JUDGE

SATABDI DUTTA
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