

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 1097 of 2022

Kishor Lal Das,
son of late Suresh Chandra Das, resident of
Joynagar Road No.6 (near Shyam Villa),
P.O. Agartala, P.S. West Agartala,
District- West Tripura, PIN-799001.

..... **Petitioner(s)**

Versus

- 1. The State of Tripura,**
represented by the Commissioner & Secretary to the
Department of Agriculture, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division- Sadar, District- West Tripura.
- 2. The Commissioner & Secretary,**
Finance Department, Government of Tripura,
New Secretariat Complex, Gurkhabasti, Agartala,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division- Sadar, District- West Tripura.
- 3. The Director,**
Department of Agriculture, Government of Tripura,
Krishi Bhawan, Akhaura Road, P.O. Agartala,
P.S. West Agartala, Sub-Division- Sadar,
District- West Tripura.
- 4. The Accountant General (A & E),**
Tripura, P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division- Sadar, District- West Tripura.
- 5. The Senior Accounts Officer,**
Office of the Accountant General (A&E), Tripura,
P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division- Sadar, District- West Tripura

..... **Respondent(s)**

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. Koomar Chakraborty, Advocate.
For Respondent(s)	:	Mr. B. Majumder, Dy. SGI Mr. D. Sarma, Addl. G.A.
Date of hearing	:	26.02.2024.
Date of pronouncement of Judgment and order	:	07.03.2024
Whether fit for reporting:	:	YES

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Judgment and Order

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. B. Majumder, learned Dy. SGI for the respondent Union of India and Mr. D. Sarma, learned Addl. G.A. representing the State respondents.

[2] The present writ petition has been filed under Article 226 of the Constitution of India for issuance of writ of mandamus and/or in the nature thereof, for mandating/directing the respondents to revoke/rescind the impugned letter dated 12.10.2022 and further for mandating/directing the respondents, not to recover any amount from the pensionary benefits of the petitioner on account of alleged excess payment.

[3] The case of the petitioner in brief is that on 25.02.1987, he joined the post of Junior Engineer (Civil) Grade-II (Group-C), Department of Agriculture. On completion of 4 years of service, the petitioner was accorded with the benefit of gradation/auto movement to the post of Junior Engineer (Civil) Grade-I (Group-B) with effect from 25.02.1991 and from 25.02.1999, the petitioner was accorded with the CAS-II benefit. Thereafter, on completion of 25 years of service, the petitioner was accorded with the benefit of ACP-III, with effect from 25.02.2012. On attaining the age of superannuation, the petitioner was retired from service on 31.03.2022 and subsequently, on 13.07.2022, PPO was issued to the petitioner reducing his last pay, from Rs.1,17,000/- to

Rs.1,10,300/-. It is submitted by the petitioner that on account of purported wrong pay fixation, by a letter dated 12.10.2022, recovery was proposed by the respondents from the pensionary benefits of the petitioner contending that the petitioner was wrongly given excess payment. Thereafter, on 15.11.2022, petitioner submitted a representation with a prayer for not making any recovery, but the same did not get any response.

[4] Aggrieved thereby, the petitioner has preferred the present writ petition seeking following reliefs:

"(i) 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, mandating/directing them to revoke/rescind the impugned Letter dated 12.10.2022;

(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, mandating/directing them, not to recover any amount from the pensionary benefits of the Petitioner, on account of alleged excess payment;

(iii) 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, mandating/directing them, to release the remaining Gratuity amount, and other outstanding pensionary benefits, in favour of the Petitioner;....."

[5] Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing on behalf of the petitioner submits that it is not the fault of the petitioner that the alleged excess payment vis-à-vis the purported wrong fixation of pay was paid to him and hence, he cannot be subjected to any manner of recovery, at this stage. It is submitted that whatever excess payment has been made by the respondents, the petitioner could not be penalized on account thereof. He further submits that if any excess payment is made to a pensioner, it cannot be recovered from his pensionary benefits unless

there is any fraud or misrepresentation on his part. In support of his submission, Mr. Roy Barman, learned senior counsel has placed reliance on the following decisions of the Hon'ble Supreme Court:

I. State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in **(2015) 4 SCC 334**

II. Civil Appeal No.7115 of 2010 (Thomas Daniel vs. State of Kerala & others) reported in **AIR 2022 Supreme Court 2153**

[6] On the other hand, Mr. D. Sarma, learned Addl. G.A. opposes the submission made by the learned senior counsel appearing for the petitioner. He contends that in the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. So, he is bound by the undertaking.

[7] Mr. Sarma, learned Addl. G.A. further contends that every government employee of the State has to submit option form for coming to revised pay scale and give undertaking that he will refund to the Government if any amount drawn by him in excess of what is admissible to him on account of erroneous fixation of pay in the revised pay structure as soon as the fact of such excess drawal brought to his notice. In support of his contention, learned Addl. G.A. has placed reliance on the judgment of Hon'ble Supreme Court in **High Court of Punjab & Haryana and others vs. Jagdev Singh** reported in **(2016) 14 SCC 267**.

[8] Heard learned counsel for the respective parties. Perused the record.

[9] To examine the case of the petitioner whether the excess amount on account of erroneous fixation of pay would be recovered from him by the Government, the relevant paragraphs of the judgments of Hon'ble Supreme Court in ***State of Punjab and others vs. Rafiq Masih (White Washer) and others*** reported in ***(2015) 4 SCC 334*** and in ***High Court of Punjab & Haryana and others vs. Jagdev Singh*** reported in ***(2016) 14 SCC 267*** are quoted hereunder for the purpose of reference:

State of Punjab and others vs. Rafiq Masih (White Washer) and others reported in ***(2015) 4 SCC 334***

".....18. It is not possible to postulate all situations of hardships which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to hereinabove, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

- (i) Recovery from the employees belonging to Class III and Class IV service (or Group C and Group D service).
- (ii) Recovery from the retired employees, or the employees who are due to retire within one year, of the order of recovery.
- (iii) Recovery from the employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.
- (iv) Recovery in cases where as employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover....."

High Court of Punjab & Haryana and others vs. Jagdev Singh reported in ***(2016) 14 SCC 267***

"...4. The Respondent was placed under suspension on 19-08-2002 and eventually, was compulsorily retired from service on 12-2-2003.

5. In the meantime, this Court in Civil Writ (C) 1022 of 1989 accepted the recommendations of the First National Judicial Pay

Commission (Shetty Commission). Thereupon, the Haryana Civil Services (Judicial Branch) and Haryana Superior Judicial Service Revised Pay Rules 2003 were notified on 7-05-2003.

6. In view thereof the pay scales of judicial officers in Haryana were once again revised with effect from 1-1-1996. An exercise was undertaken for adjustment of excess payments made to judicial officers, following the notification of the revised pay rules. On 18-2-2004, a letter for the recovery of an amount of Rs. 1,22,003/- was served upon the Respondent pursuant to the direction of the Registrar of the High Court.

7. The Respondent challenged the action for recovery in writ proceedings under Article 226. The petition was allowed by the impugned judgment of the High Court. The High Court found substance in the grievance of the Respondent that the excess payment made to him towards salary and allowance prior to his retirement could not be recovered at that stage, there being no fraud or misrepresentation on his part.

8. The order of the High Court has been challenged in these proceedings. From the record of the proceedings, it is evident that when the Respondent opted for the revised pay scale, he furnished an undertaking to the effect that he would be liable to refund any excess payment made to him. In the counter affidavit which has been filed by the Respondent in these proceedings, this position has been specifically admitted. Subsequently, when the rules were revised and notified on 7-5-2003 it was found that a payment in excess had been made to the Respondent. On 18.02.2004, the excess payment was sought to be recovered in terms of the undertaking.

9. The submission of the Respondent, which found favour with the High Court, was that a payment which has been made in excess cannot be recovered from an employee who has retired from the service of the state. This, in our view, will have no application to a situation such as the present where an undertaking was specifically furnished by the officer at the time when his pay was initially revised accepting that any payment found to have been made in excess would be liable to be adjusted. While opting for the benefit of the revised pay scale, the Respondent was clearly on notice of the fact that a future re-fixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In *State of Punjab & Ors etc. vs. Rafiq Masih* this Court held that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

“(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."

(emphasis supplied).

11. The principle enunciated in Proposition (ii) above cannot apply to a situation such as in the present case. In the present case, the officer to whom the payment was made in the first instance was clearly placed on notice that any payment found to have been made in excess would be required to be refunded. The officer furnished an undertaking while opting for the revised pay scale. He is bound by the undertaking....."

[10] It is seen from record that on 12.05.2009 the petitioner has furnished an undertaking to the respondent, which is quoted hereunder:

".....*Declaration:-* I hereby undertake to refund to the Government any amount which may be drawn by me in excess of what is admissible to me on account of erroneous fixation of pay in the revised pay structure as soon as the fact of such excess drawal comes/brought to my notice."

[11] Upon hearing the submissions made at the Bar by the learned counsel for the respective parties and on perusal of record, this Court is of the view that the petitioner had signed undertaking with the declaration that he would reimburse the amount in the event, if any wrong fixation is made. The petitioner was retired on 31.03.2022 and subsequently, PPO was issued to the petitioner reducing his last pay from Rs.1,17,000/- to Rs.1,10,300/- on 13.07.2022. On account of wrong pay fixation, by a letter dated 12.10.2022, recovery was proposed by the respondents from the pensionary benefits of the petitioner contending that the petitioner was wrongly given excess payment. Petitioner having executed an undertaking, it is not open for him to wriggle out. Thus, this Court is of the opinion that there are no laches on the part of the respondents. In the judgments of the Hon'ble Supreme Court in *State of Punjab and others vs. Rafiq Masih(White Washer) and others* and *High Court of Punjab & Haryana and others vs. Jagdev Singh (cited supra)*, the matter has been categorically dealt with

and keeping in view of the said judgments of the Hon'ble Supreme Court, it is held that any payment found to have been made in excess would be required to be refunded by the employee in view of the undertaking executed.

In view of the above, the present writ petition is dismissed and the same is accordingly disposed of.

As a sequel, miscellaneous application(s), pending if any, shall also stand closed.



Sabyasachi G.

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GHOSH

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