

HIGH COURT OF TRIPURA
AGARTALA

WP(C) 26 of 2025

Smt. Sharmistha Roy (Saha)

---Petitioner(s)

Versus

The State of Tripura and 5 Ors.

---Respondent(s)

For Petitioner(s)	:	Mr. Arijit Bhowmik, Advocate.
For Respondent(s)	:	Mrs. P. Chakraborty, Advocate.
		Mr. Soumyadeep Saha, Advocate.

HON'BLE MR. JUSTICE T. AMARNATH GOUD

Order

24.01.2025

Heard learned counsel for the parties.

[2] This is a petition under Article 226 of the Constitution of India for seeking the following relief(s):

- I. Issue notice upon the Respondents.
- II. Call for the records from the custody of the Respondents.
- III. Issue Rule calling upon the Respondents to show cause as to why a Writ of Certiorari or any other appropriate Writ shall not be issued setting aside and quashing the action of recovery initiated by the Respondent No. 6 from the family pension received by the Petitioner upon demise of Lt. Pushkar Saha and the letter/order dated 24.12.2024 issued by the Respondent No. 6.

AND

Issue Rule calling upon the Respondents to show cause as to why a Writ of Mandamus or any other appropriate Writ shall not be issued mandating the Respondents to refund the Petitioner the amount already deducted from the pension of the Petitioner (Rs.81,189/-) along with interest @ 12% per annum till date of actual payment.

AND

Issue Rule calling upon the Respondents to show cause as to why the Petitioner shall not be entitled to a sum of Rs. 50,000/- towards cost of litigation.

- IV. And after hearing the parties, be pleased to make the rule absolute.

[3] The petitioner approaches this Court under Article 226 of the Constitution of India seeking a Writ of Certiorari or any other appropriate Writ for setting aside the

process of recovery initiated by the Respondent No. 6 from the Family Pension received by the petitioner. The petitioner further seeks a Writ of Mandamus or any other appropriate Writ mandating the respondents to refund the amount already deducted from the Family Pension received by the petitioner along with interest @ 12% per annum till the date of actual payment. The petitioner further raises grievance regarding violation of the right of the Petitioner under the CCS (Pension) Rules, 1972 The Petitioner before this Hon'ble Court is the wife of Lt. Puskar Saha, Ex- Head Assistant who served under the respondent No. 1 to 3 till his demise. After the demise of Lt. Puskar Saha on 25.06.2016 the petitioner being the widow of Lt. Puskar Saha started getting Family Pension. Pension Payment Order was issued by the Respondent No. 5 bearing PPO No. PEN-1/FAM/FPPO/ST/141613036 sanctioning Family Pension in respect of the Petitioner @ Rs. 9220 per month.

[4] The respondent No. 2 issued an order dated 21st September, 2023 in view of the judgment and order dated 19th April, 2021 passed in W.A No. 37/2017 refixing the pay of Lt. Puskar Saha till his death on 25.06.2016. vide letter dated 16.10.2023 the respondent No. 3 issued an intimation to the respondent No.5 for recalculation of the Family Pension in respect of Lt. Puskar Saha considering the refixation of pay of Lt. Puskar Saha vide order dated 21st September, 2023. The respondent No. 5 i.e. the Office of Account General (A&E), Tripura issued a letter dated 6th March, 2024 bearing No. Pen- 1/Trip/Sup/Rev/45/17796/15966/2023-24 whereby it was provided that the revised family pension payable to the petitioner. The respondent No. 6 upon receipt of the letter dated 12.04.2024 started recovery from the pension payable to the Petitioner @ Rs. 10,042 (Rupees Ten Thousand and Forty Two) every month, starting from May 2024. The petitioner was further intimated that a total amount of Rs. 81,189/- will be recovered from the pension of the petitioner for the alleged excess amount drawn by Lt. Puskar Saha, as per the order of refixation dated 21st September, 2023. The petitioner states that

the petitioner does not raise any grievance regarding the refixation of pension of the petitioner vide letter dated 6th March, 2024 issued by the respondent No. 5. The petitioner states that vide judgment and order dated 19th April 2021 passed in W.A No. 37 of 2017 the Ld. Division Bench of this Hon'ble High Court had clearly provided that there shall not be any recovery for the past overpayments as such overpayments was not on account of fault or misrepresentation on the part of the employees. in the humble submission of the petitioner in view of Rule 9 of the CCS (Pension) Rules, 1972 no recovery is permissible from the petitioner without any order from the Governor pursuant to any departmental or judicial proceeding holding the pensioner guilty of misconduct or negligence.

[5] The petitioner states that the entire process of recovery from the pension payable to the petitioner is illegal and violative of the rights of the petitioner under the CCS (Pension) Rules, 1972. The petitioner had filed W.P(C) No.707 of 2024 before this Hon'ble High Court challenging the action of recovery and praying for refund. Vide judgment and order dated 25.11.2024 this Hon'ble Court disposed of the Writ Petition directing the Respondent No.6 to pass a speaking order within 1 (one) month from the date of order. Hon'ble Court also observed that refund, if any, shall be made from the salary of the Branch Manager of the concerned bank. The petitioner prays for setting aside and quashing the action of recovery initiated by the Respondent No. 6 and the letter dated 24.12.2024 issued by the Respondent No. 6. Hence this writ petition.

[6] Heard and perused the record.

[7] On the last occasion, this court heard both sides on the point of legal issue and an opportunity was given to the government advocate to ascertain on the fact on the legal issue whether the subject matter involved in this writ petition is covered by the judgment of the Hon'ble Supreme Court of India. This court in number of cases have disposed of matters on the same principle holding that no recovery can be made from the

pension or the retirement benefits from a retired person if it is found that the amount at the time of retirement is disbursed by making a wrong calculation by the employer. Since the point has been settled, the government advocate wanted to ascertain the fact.

[8] Today, when the case is called, on behalf of the learned Government Advocate, Mrs. P. Chakraborty, learned advocate is present and sought time for filing counter affidavit. Since the subject matter is already covered on the legal issue, filing a counter affidavit on the point of factual issues is not relevant. On the earlier occasion also the government advocate has not denied on the said legal issue.

[9] This court has also dealt with the similar cases in the past. In one such matter, WP(C) 1098 of 2022, which was disposed of on 07.03.2024, the case of the petitioner whether the excess amount of pay would be recovered from the petitioner by the Government, a judgment of the apex court was relied upon by the counsel for the petitioner in that writ petition. The relevant paragraphs of the judgment of the Hon'ble Supreme Court in **State of Punjab and others vs. Rafiq Masih (White Washer)** and others reported in (2015) 4 SCC 334 is 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.....”

[10] Though it was held that if any payment is found to have been made in excess that would be required to be refunded by the employee in view of the undertaking executed. Here is the case where no such undertaking is given by the petitioner.

[11] Having gone through the record and also having considered the submission as advanced by the learned counsel for the parties, this court considers that the petition be disposed of following the principles already followed. Further it becomes immense necessary to point out that the respondent who is withholding the amount is not supposed to do that unless there is an order of garnishee from any competent authority or court for withholding or deducting from any such amount from the pension of the petitioner. In the event, if such order exists, if the same has not been communicated to the petitioner, the said action of the respondent is found unwarranted.

[12] In view of the same, the respondents are directed not to deduct any amount unless there is any expressed order passed in this regard for deducting or withholding by the competent authority. In the absence of such order, the respondents shall release the amounts in favour of the petitioner. The amount already deducted, if any, be released in favour of the petitioner.

[13] In view of the above, the instant writ petition stands allowed and disposed of. As a sequel, stay, if any, stands vacated. Pending application(s), if any, also stands closed.

JUDGE

Dipak

**DIPAK
DAS**

Digitally signed by
DIPAK DAS
Date: 2025.01.28
17:05:24 +05'30'