

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.46 of 2025

Sri Anup Kumar Saha, (61 years)
S/O- Lt. Anil Chandra Saha,
Resident of Kunjaban Colony,
P.O.- Abhoynagar, P.S.- East Agartala,
Sub-Division- Sadar,
District –West Tripura,
PIN-799005.

.... Petitioner(s).

Versus

- 1. The State of Tripura**,
(to be represented by) the Secretary,
Department of Finance, Government of Tripura,
New Secretariat Building,
New Capital Complex, Agartala,
West Tripura, PIN-799010.
- 2. The Secretary**,
Department of Finance,
Government of Tripura,
New Secretariat Building,
New Capital Complex, Agartala,
West Tripura, PIN-799010.
- 3. Tripura Road Transport Corporation (TRTC)**,
(A Government of Tripura undertaking) to be
represented by The Chairman,
Tripura Road Transport Corporation,
Krishnanagar, Agartala, West Tripura,
PIN-799001.
- 4. The Managing Director**,
Tripura Road Transport Corporation,
Krishnanagar, Agartala,
West Tripura, PIN-799001.
- 5. The Secretary**,
Department of Transport,
Government of Tripura,
Paribahan Bhavan, Astabol,
Northgate, Agartala,
West Tripura District,
PIN-799001.

.....Respondent(s).

For Petitioner(s) : Mr. Purusuttam Roy Barman, Sr. Adv.
Ms. Sutapa Deb Barman, Adv.
For Respondent(s) : Mr. Karnajit De, Addl. G.A.
Mr. Dipankar Sarma, Addl. G.A.
Date of Hearing : 30.04.2025
Date of delivery of
Judgment and Order : 06.05.2025
Whether fit for
Reporting : **YES**

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

By means of filing this writ petition, the present petitioner has sought for the 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 and/or direction/directions of like nature shall not be issued whereby directing the Respondents to make the full and final payment of Gratuity amounting to Rs.2,07,523/- with interest @9% per annum to the Petitioner till the date of actual payment an interest @9% also for deferred payment of Rs.12,07,523/-.**

(ii) **Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to quash and cancel the letter, dated 02.01.2025 issued by the Respondent No.4.**

(iii) **Issue Rule upon the Respondents to show cause as to why a writ in the nature of Mandamus and/or order/orders and/or direction/directions of like nature shall not be issued whereby directing the Respondents to determine the Gratuity payable to the Petitioner on the basis of his last basic pay i.e. Rs.45,900/-**

(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.**

02. Heard Learned Senior Counsel, Mr. P. Roy Barman assisted by Learned Counsel, Ms. Sutapa Deb Barman appearing on behalf of the petitioner. Also heard Learned Addl. G.A., Mr. K. De appearing on behalf of the State-respondents and further heard Learned Addl. G.A., Mr. D. Sarma appearing on behalf of the respondent Nos.3 and 4.

03. The brief facts of this writ petition are as follows:-

According to the petitioner, he joined Tripura Road Transport Corporation, in short TRTC on 18.01.1985 in the post of Guard. After attaining the age of superannuation, the petitioner retired from service on 31.12.2022 vide order dated 04.02.2022 of the Managing Director, TRTC. The petitioner at the time of retirement was holding the post of Head Guard **(Annexure-1)**.

04. The Tripura State Civil Services (Leave) Rules, 1986 is applicable to the petitioner as it has been adopted by the TRTC. The payment of Gratuity Act 1972 is also applicable to the petitioner.

05. According to the petitioner, the last basic pay and DA of the petitioner at the time of retirement was Rs.45,900/- and Rs.9,180/- respectively which would be evident from the certificate, dated 23.08.2023 issued by the Managing Director, TRTC. Further according to the petitioner he discharged 38 years of qualifying service and considering the basic pay and DA he was entitled to gratuity for an amount of Rs.12,07,523/**(Annexure-2)**.

06. The TRTC vide order dated 24.03.2023 sanctioned a sum of Rs.10,00,000/- towards final payment of Gratuity in favour of the petitioner who retired from service on superannuation. But the respondents have released payment of Rs.10,00,000/- to the petitioner as gratuity on 24.03.2023 after the due date. So, the petitioner is entitled to more Rs.2,07,523/- as the balance amount of gratuity (**Annexure-3**).

07. The payment of Gratuity Act, 1972 has been amended on 2018 which came into force on 29.03.2018 and by the said amendment Section 4(3) of the Act, 1972 has been amended increasing the ceiling limit at Rs.20,00,000/- as notified by the Central Government vide notification dated 29.03.2018 (**Annexure-4**).

08. It was further submitted that one LalZakimRokhum, a retired employee of TRTC filed a writ petition before this Court for granting him full and final payment of gratuity at the enhanced rate i.e. at Rs.20,00,000/- introduced by the amendment of the Act, 1972 and this Court vide Judgment dated 20.02.2020 delivered in WP(C) No.1209 of 2019, held that the employees of TRTC are entitled to Payment of Gratuity in terms of the amendment of the Payment of Gratuity Act, 1972, vide notification dated 29.03.2018 issued by the Government of India, raising gratuity limit to Rs.20,00,000/- from Rs.10,00,000/- and also directed that the petitioner shall be paid gratuity in terms of the ceiling limit i.e. Rs.20,00,000/-

with 7.5% interest. The said judgment has been complied with by the said respondents **(Annexure-5)**.

09. The present petitioner, thereafter, on 19.04.2023, made a representation demanding full and final payment of gratuity as per the enhanced rate with interest, but no action was taken **(Annexure-6 & 7)**.

10. Being aggrieved, the petitioner had approached this Court by filing a writ petition bearing No.WP(C) No.45 of 2024 and this Court vide Judgment and Order dated 26.04.2024 allowed the writ petition observing that the petitioner is entitled for leave encashment. In WP(C) No.45/2024, the petitioner sought two fold reliefs i.e. one for release of full and final payment of gratuity and also for release of leave encashment etc. In those writ petitions the reliefs sought for was for sanction of leave encashment benefit. So, the present petitioner filed a review petition before this Court vide Rev. Pet. No.17/2024 and this High Court vide order dated 13.09.2024 allowed the said review petition and directed that the petitioner is also entitled to gratuity along with leave encashment benefit **(Annexure-8)**.

11. Thereafter, in compliance of the order dated, 13.09.2024 passed by this Court further Rs.49,677/- has been sanctioned in favour of the petitioner as remaining amount of gratuity, vide Sanction Order dated 08.10.2024 issued by the Managing Director, TRTC **(Annexure-9)**.

12. After that the petitioner served legal notice on 03.11.2024 through Learned Advocate Ms. Sutapa Deb Barman **(Annexure-10)**. In reply it was informed that the petitioner is not entitled to any further amount of gratuity because as per the Audit report the last basic pay of the petitioner has been recorded as Rs.39,900/- as on 31.12.2022 and as such his Gratuity comes to Rs.10,49,677/-. Thus the petitioner is not entitled to any further amount of Rs.2,07,523/-. It has been also stated that in the said order dated, 13.09.2024 passed by this Court in Rev. Pet. No.17/2024 no direction was given to the TRTC for releasing Gratuity as per the claim of the petitioner along with interest for deferred payment **(Annexure-11)**.

13. According to the petitioner, in the letter dated 02.01.2025 issued by the Managing Director, TRTC it was informed that his basic pay has been reduced from Rs.45,900/- to Rs.39,900/- on the basis of alleged Audit Report. In this regard, no show cause notice was issued to the petitioner to show cause as to why his basic pay shall not be reduced to Rs.39,900/- from Rs.45,900/-.

According to the petitioner, behind the back of the petitioner, the respondents reduced the basic pay of the petitioner to Rs.39,900/- from Rs.45,900/-. Hence, the present petitioner filed the writ petition. The writ petition was contested both by the corporation and the State.

14. The respondent Nos.3 and 4 denied the assertions made in the writ petition and in Para No.11, the said respondents have made following assertions.

"11. That, in regards to the statement made in paragraph-9 to 11 of the writ Petition it is stated that averments are denied and disputed. It is stated that at the time of retirement of the Petitioner from the post of Head Guard as on 31.12.2022 his basic pay was Rs.39,900/-. The fact is that, the TRTC conducted Audit accounts and re-calculation of Basic Pay & allowances of all employees under the Corporation. In so far as the Petitioner is concerned, the Directorate of Audit has observed the following Due Drawn statement:-

Excess pay & allowance paid to Shri Anup Kumar Saha, Head Guard, Office of the Managing Director, TRTC for the period from 1st October, 2018 to 31st August, 2022.

DoB: 18.12.1962	Date of Apptt.: 18.01.1985: Guard-Gr.III	1 ACP 18.01.1995 (pre-revised Grade Pay:1300 & Revised Grade Pay: 1650/-)
2nd ACP: 18.01.2002 (Pre-revised Gr.Pay:1400 & Revised Gr.Pay:1800/-)	3rd ACP 18.01.2010 (Pre-Revised GP:1500 & Revised GP; 1900/-)	1st Promotion: 05.10.2013 (Pre- revised GP;1600 & Revised GP: 2000 [Guard to Security Guard]

He was Promoted on 20.12.2021 (Ad-hoc). Accordingly pay has been fixed by the Corporation with Pre-revised Grade Pay Rs.2000 & Revised Gr. Pay Rs.2400/-though as per F.D order corresponding Grade Pay was Rs.1600/- (Revised Rs.2000/-) such benefit will not be allowed to him as he already enjoyed the same grade Pay i.s. Rs. 2000/- at the time of 1st promotion on 05.10.2013. Now as per the Due Drawn statement prepared by the Audit based on the accounts of the Corporation in respect of the Petitioner from 1st October, 2018 to 31st August, 2022 is shown in separate statement.

DoB: 18.12.1962 18.01.1985	Date of Apptt. as Guard Gr.III	1st ACP 18.1.1995 (pre-Revised GP:1300 & Revised GP:1650.
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2nd ACP 18.01.2002 (Pre-revised GP: 1400 & Revised GP:1800	3rd ACP 18.01.2010 (Pre-revised: GP 1500 & Revised GP:1900)	1st Promotion 05.10.2013, Pre- revised GP 1600 & Revised GP 2000(Guard to Security Guard).
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A copy of the Audit Accounts statement for the period from 1st October, 2018 to 31st August, 2022 in respect of the Excess Pay & Allowance issued by the Directorate of Audit is annexed and marked as **ANNEXURE-R/1**.

From the Due Drawn statement issued by the Audit Directorate, it would appear that the Petitioner was drawing excess pay and allowance, the reasons whatever it may be. After the Audit observation, re-calculation of Gratuity of the Petitioner Ex-Head Guard, TRTC during the period of his retirement, was made as follows:-

Date of retirement -2022-12-31

Date of Joining -1985-01-18

Total period of service is 37 yrs, 11 months and 13 days i.e. 38 years.

Now taking into consideration his revised Basic Pay as per Audit observation, the Basic pay at the time of retirement of the Petitioner was Rs.39,900/-+ DA 20% comes to Rs.7,980/- = Rs.47,889 x 15 x 38 yrs divided by 26 = Rs.10,496,77/-. Thus the total Gratuity comes at Rs. 10,49,677/-. On the retirement of the petitioner, as per sub-Rule(3) of Section 4 of the payment of the Gratuity Act, 1972 and 3rd Amendment Act, 2010 as adopted in TRTC, an amount of Rs. 10,00,000/-(Rupees Ten Lakhs) was released to him being the provisional payment of Gratuity as per sanction order issued vide No.F.1(132)-TRTC/ Set/ Gratuity/Vol-X/2019/1120, dated 24/03/2023. Subsequently the rest amount of Rs.49,677/- was also paid to him vide No.9(728) TRTC/Gen/(L)1412-15 dated 08/10/2024. Petitioner Shri Anup Kumar Saha, Ex Guard retired from the post of Head Guard and as per Audit Report his last Basic pay is recorded as Rs.39,900/- as on 31/12/2022 (at the time of retirement). Accordingly, his gratuity amount was calculated as Basic Pay Rs.39,900/-+(20% DA=Rs.7,980/-)=Total Rs.47,880/-Service Length-38 years, Total Gratuity amount comes at Rs. 10,49,677/.

Accordingly, sanction order was issued on 24/03/2023 for an amount of Rs. 10,00,000/-and on 08/10/2024 for an amount of Rs.49,677/-

It may be further mentioned herein that it is fact that the Managing Director, TRTC issued certificate dated 23.08.2023 showing the basic pay of the petitioner as Rs.45,900/-. But during Audit observation, the Due and Drawn statement of the Petitioner was prepared and after recalculation, it is found that the petitioner was paid excess amount as pay and allowance since 1st October, 2018 to August, 2022. Accordingly, the petitioner was paid Gratuity amount on the basis of the recalculated amount done by the Directorate of Audit."

15. In Para No.13, the said respondents also stated that the petitioner has been paid gratuity considering the enhanced ceiling limit of Rs.20,00,000/- and based on the Audit observation his basic pay was reduced to Rs.39,900/- from Rs.49,900/-.

16. Further in Para No.19 the said respondents also have asserted the following facts:

"19. That, in regards to the statement made in paragraph 25 of the writ Petition it is stated that averments are denied and disputed. It is stated that WP(C) 45 of 2024 was filed for leave encashment and full and final payment of gratuity with interest for alleged deferred payment etc. The Hon'ble High Court passed a common Judgment and Order on 26.04.2024 directing the TRTC respondents to look into the matter and settle the claim of the petitioners within a period of six months. Being aggrieved, Petitioner had filed Review petition before the Hon'ble High Court, registered as 17/2024 in WP(C) 45/2024 (d/o) to review the Judgment and order declaring that the petitioner of WP(C) No.45/2024 is entitled to full and final payment of gratuity taking into consideration the ceiling limit of Rs.20 lakhs in terms of Notification dated 29/03/2018 in the Gazette of India and to extend such benefit to the petitioner. The Hon'ble High

Court passed Order on 13/09/2024. Nowhere in the Judgment and Order, the Hon'ble High Court directed TRTC for releasing Gratuity as per the claim of the petitioner. On scrutiny it appears that an amount of Rs.10 lakhs was paid as Gratuity vide sanction order dated 24/03/2024 and subsequently a further amount of Rs.49,677/- was found due which was also released, thus a total amount of Rs.10,49,677/- has already been paid to the Petitioner considering the enhanced ceiling limit of Gratuity to the extent of Rs.20 lakhs. The Petitioner, Ex-Guard retired from the post of Head Guard and as per Audit Report his last Basic pay is recorded as Rs.39,900/- as on 31/12/2022 (at the time of retirement). Accordingly, his gratuity amount was calculated as per Basic Pay of Rs.39,900/- + (20%DA=Rs.7,980/-) = Total Rs.47,880/. Service Length-38 years, Total Gratuity amount comes at Rs. 10,49,677/-."

So, by the counter-affidavit, the respondents also prayed for dismissal of this writ petition.

17. No separate counter-affidavit is filed by the State-respondents and in course of hearing, Learned Addl. G.A. submitted that they would also rely upon the same counter-affidavit. The said respondent Nos.3 and 4 with their counter-affidavit annexed Annexure-R/1 i.e. the Due Drawn statement and according to them as per Due Drawn statement the department is to recover Rs.1,87,380/- from the present petitioner being excess amount paid to the present petitioner.

18. I have heard detailed argument of both the sides. At the time of hearing of argument Learned Senior Counsel for the petitioner submitted that behind the back of the petitioner the Managing Director reduced the basic pay from Rs.45,900/- to Rs.39,900/-. Further no notice/show cause was issued upon

him before reduction of the basic pay and as such the petitioner is entitled to the relief as prayed for in the writ petition.

19. On the other hand, Learned Addl. G.A., Mr. K. De representing the State-respondents and Learned Addl. G.A., Mr. D. Sarma, appearing for the respondent Nos.3 and 4, taking part in the hearing drawn the attention of the Court that treating the ceiling limit of gratuity at Rs.20,00,000/- vide Sanction Order dated 24.03.2023 a sum of Rs.10,00,000/- was paid to the petitioner and thereafter a further sum of Rs.49,677/- was paid to the petitioner by the Managing Director, TRTC vide Sanction Order dated 08.10.2024, and as such the petitioner is not entitled to any further amount from the department concerned.

20. So, after hearing both the sides and also after perusing the documents as Annexures relied upon by the petitioner as well as the counter-affidavit submitted by the respondents along with the Annexures, it appears that the basic pay of the petitioner was reduced from Rs.45,900/- to Rs.39,900/- beyond the knowledge of the petitioner. The respondents in this regard failed to submit any document showing that the basic pay was reduced from Rs.45,900/- to Rs.39,900/- after giving due intimation to the present petitioner. The respondents on the basis of last basic pay of Rs.39,900/- paid the amount of Rs.10,49,677/- as gratuity wherein according to the petitioner on the basis of pay slip

dated 23.08.2023, the petitioner is entitled to get Rs.12,07,523/-. Thus, it is apparent from the record that there is a gap of Rs.1,57,846/- which according to the petitioner, he is entitled to get from his parent department i.e. TRTC.

21. According to the respondents they have paid excess amount of Rs.1,87,380/- to the petitioner which according to them is liable to be recovered from the present petitioner. Admittedly, the petitioner was a Group-C employee of the corporation. From the annexed documents relied upon by both the parties, it appears that the aforesaid amount of Rs.1,87,380/- was paid to the petitioner without any misrepresentation or fraud played by the petitioner. Rather the same was made due to alleged wrong calculation of basic pay by the respondent department for which the present petitioner cannot be held liable and responsible and he cannot be asked to restore/refund the amount to the respondent department.

22. There are series of judgments in this regard, that if there is any excess amount paid to any Group-C/Group-D employees in that case after retirement of the employee there is very least scope to recover the said amount from the respective employee. Hon'ble the Supreme Court of India in a case reported in **(2015) 4 SCC 334 [State of Punjab And Others Vs. Rafiq Masih (White Washer) And Others]** in Para Nos.17 and 18 observed as under:-

"17. Last of all, reference may be made to the decision in Sahib Ram v. Union of India [1995 Supp (1) SCC 18]

wherein it was concluded as under: (SCC pp. 19-20. paras 4-5)

"4. Mr. Prem Malhotra, learned counsel for the appellant, contended that the previous scale of Rs 220-550 to which the appellant was entitled became Rs 700-1600 since the appellant had been granted that scale of pay in relaxation of the educational qualification. The High Court was, therefore, not right in dismissing the writ petition. We do not find any force in this contention. It is seen that the Government in consultation with the University Grants Commission had revised the pay scale of a Librarian working in the colleges to Rs 700-1600 but they insisted upon the minimum educational qualification of first or second class MA, MSc, MCom plus a first or second class BLib Science or a Diploma in Library Science. The relaxation given was only as regards obtaining first or second class in the prescribed educational qualification but not relaxation in the educational qualification itself.

5. Admittedly the appellant does not possess the required educational qualifications. Under the circumstances the appellant would not be entitled to the relaxation. The Principal erred in granting him the relaxation. Since the date of relaxation the appellant had been paid his salary on the revised scale. However, it is not on account of any misrepresentation made by the appellant that the benefit of the higher pay scale was given to him but by wrong construction made by the Principal for which the appellant cannot be held to be at fault. Under the circumstances the amount paid till date may not be recovered from the appellant. The principle of equal pay for equal work would not apply to the scales prescribed by the University Grants Commission. The appeal is allowed partly without any order as to costs." (emphasis supplied)

It would be pertinent to mention, that Librarians were equated with Lecturers, for the grant of the pay scale of Rs 700-1600. The above pay possessed the prescribed minimum educational qualification (first or

second class MA, MSc, MCom plus a first or second class BLib Science or a diploma in Library Science, the degree of MLib Science being a preferential qualification). For those Librarians appointed prior to 3-12-1972, the educational qualifications were relaxed. In Sahib Ram case [Sahib Ram v. State of Haryana, 1995 Supp (1) SCC 18], a mistake was committed by wrongly extending to the appellants the revised pay scale, by relaxing the prescribed educational qualifications, even though the appellants concerned were ineligible for the same. The appellants concerned were held not eligible for the higher scale, by applying the principle of "equal pay for equal work". This Court, in the above circumstances, did not allow the recovery of the excess payment. This was apparently done because this Court felt that the employees were entitled to wages, for the post against which they had discharged their duties. In the above view of the matter, we are of the opinion, that it would be iniquitous and arbitrary for an employer to require an employee to refund the wages of a higher post, against which he had wrongfully been permitted to work, though he should have rightfully been required to work against an inferior post.

18. It is not possible to postulate all situations of hardship 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 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."

Relying upon the aforesaid principle of law laid down by the Hon'ble Apex Court, it appears to this Court that if at this stage the aforesaid amount of Rs.1,87,380/- as alleged by the respondents is to be recovered from the petitioner in that case the same would cause undue hardships and sufferings to the petitioner being a poor paid employee who had received the amount without any fault of his own rather the fault alleged to be committed by the department. So, the respondents department be restrained from recovering the said amount from the petitioner at this stage. So, after hearing of both the sides and also going through the relevant documents submitted by both the parties this writ petition is disposed of with the following observations/directions:-

(i) That the respondent department shall be restrained from recovery/realization of the aforesaid amount of Rs.1,87,380/- from the petitioner in view of the aforesaid principle of law laid down by the Hon'ble Apex Court in aforesaid **Rafiq Masih (supra)** case.

(ii) Since, the basic pay of the petitioner was reduced from Rs.45,900/- to Rs.35,900/- behind the back of the petitioner by the respondent department i.e. the Managing Director, TRTC, based on the Audit Report. So the petitioner of this case shall be at liberty to file a representation to the respondent Managing Director, TRTC within a period of 15 days from the date of delivery of the judgment and thereafter the respondent department i.e. Managing Director, TRTC shall dispose of the grievances of the petitioner within a further period of next 01 (one) month regarding reduction of basic pay from Rs.45,900/- to Rs.35,900/-.

(iii) If it is found that the basic pay was reduced without any cogent grounds in that case the department shall release the balance amount of gratuity in favour of the petitioner as claimed by him in the writ petition after due calculation, considering the ceiling limit of Rs.20,00,000/- as per notification dated 29.03.2018 issued by the Central Government, as the same has been admitted by the respondents.

With these observations, this writ petition is disposed of.

Pending application/s, if any, also stands disposed of.

JUDGE

Amrita

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