

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.54 of 2025

Benu Ranjan Goswami,
Son of Late Rash Mohan Goswami,
Resident of Singhamura, South Badharghat,
PO-Charipara, PS-Amtali, Agartala,
West Tripura, Pin-799003, Age-62 years.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by the Commissioner & Secretary to the Department of Agriculture & Farmers Welfare, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Commissioner & Secretary, Finance Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

3. The Director, Department of Agriculture & Farmers Welfare, Government of Tripura, Krishi Bhawan, Akhaura Road, PO-Agartala, PS-West Agartala, Sub-Division-Sadar, District-West Tripura.

4. The Executive Engineer (Mechanical), Department of Agriculture & Farmers' Welfare, Government of Tripura, PO-Agartala, PS- West Agartala, District- West Tripura, Pin-799001.

5. The Accountant General (A & E), Tripura, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.

6. The Senior Accounts Officer, Office of the Accountant General (A & E), Tripura, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.

-----Respondent(s)

For Petitioner(s)	:	Mr. Purusuttam Roy Barman, Sr. Adv. Mr. Koomar Chakraborty, Adv.
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For Respondent(s)	:	Mr. Dipankar Sarma, Addl. GA Mr. Soumyadeep Saha, Adv.
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Date of hearing
and delivery
of Judgment & Order : 30.07.2025

Whether fit for
reporting : **YES**

HON'BLE MR. JUSTICE BISWAJIT PALIT
Judgment & Order(Oral)

The present writ petition is filed by the petitioner seeking the 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 Letters dated 25.04.2023 & 10.01.2025 (Annexures-2 & 7 respectively supra);**
- 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, either from the pensionary benefits of the Petitioner, or from his monthly pension, on account of the 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 (amounting to Rs.2.5 lacs), alongwith Interest thereon (due to belated payment thereof), in favour of the Petitioner, and also, to modify the PPO of the Petitioner by restoring his actual Last Pay of Rs.1,20,500/-, and thereupon, release the arrears thereof;**
- iv) In the Ad-interim, and thereafter, on hearing the parties, in the Interim, an Order in terms of (i) & (ii) above;**
- v) Call for the records, appertaining to this Writ Petition;**
- vi) After hearing the parties, be pleased to make the Rule absolute in terms of (i) to (iv) above;**
- vii) Costs of and incidental to this proceeding;**
- viii) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"**

2. Heard Learned Senior Counsel, Mr. Purusuttam Roy Barman assisted by Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the petitioner. Also heard Learned Addl. GA, Mr. Dipankar Sarma appearing on behalf of the respondents-State and Learned Counsel, Mr. Soumyadeep Saha appearing on behalf of the respondent Nos.5 and 6.

3. Brief fact of the case is that the petitioner namely, Benu Ranjan Goswami joined in the post of Extension Officer (Engineering), Group-C under the Department of Agriculture, Government of Tripura on 29.12.1987. Thereafter, on completion of 4(four) years of service, he was given the benefit of gradation/auto movement to the post of Junior Engineer (Mechanical), Grade-I (Group-B) w.e.f. 29.12.1991. Again, on completion of next 8(eight) years of service, he was granted the benefit of CAS-II w.e.f. 29.12.1999. After that on completion of 25 years of service he was given the benefit of ACP-III w.e.f. 29.12.2012 and after rendering a considerable period of time, he superannuated from service on 31.01.2023.

3.1. Thereafter, the petitioner received one letter dated 25.04.2023 issued by the respondents reducing the Last Pay of the petitioner from Rs.1,20,500/- to Rs.1,13,600/- on the premise of a purported fixation. It was also mentioned in the said letter that the balance amount of gratuity and the entire commuted value of pension was withheld by the respondents. After that, again on 18.08.2023 a revised PPO was issued indicating his reduced Last Pay of Rs.1,13,600/-. Thus, the monthly pension of the petitioner in terms of his reduced Last pay was initiated and 75% of the gratuity amount was released. However, the respondents withheld remaining gratuity amounting to Rs.2.5 lakhs and the entire commuted value of pension. Being aggrieved, the petitioner submitted a representation on 27.07.2023 to the respondent authority requesting not to recover any amount and to release his

outstanding dues. But as his grievance was unaddressed so, the petitioner filed one writ petition before this Court bearing WP(C) No.778 of 2023 which was disposed of on 29.01.2024 with a direction to consider his representation within a period of 3(three) months. However, the same was not complied with so, the petitioner further filed Cont.Cas(C) No.93 of 2024 and in the contempt proceeding this Court vide order dated 06.01.2025 directed the respondents to conclude the proceeding in pursuance of order dated 29.01.2024 and to issue a speaking order by 01.02.2025. Thereafter, the respondent No.4 vide communication dated 10.01.2025 directed the petitioner to deposit the alleged excess amount of Rs.5,75,504/- within 4(four) days. Being aggrieved with that communication, the petitioner filed the present writ petition seeking the reliefs as stated above.

4. At the time of hearing, Learned Senior Counsel for the petitioner submitted that there was no fraud or misrepresentation in discharging duties on the part of the petitioner and the Department itself fixed the pay of the petitioner and if any excess payment was made, that was due to the wrong fixation of pay by the Department. Moreover, since the petitioner has gone on superannuation so, if at this stage, any recovery order is made that should cause undue hardships to the petitioner and also would be iniquitous. Learned Senior Counsel, Mr. Roy Barman further submitted that in view of the principle of law laid down by the Hon'ble Supreme Court of India in **State of Punjab vs. Rafiq Masih**, reported in **(2015) 4 SCC 334** and in **Thomas Daniel vs.**

State of Kerala & Ors., reported in **2022 SCC OnLine SC 536**

recovery is impermissible in the eye of law. Further, Learned Senior Counsel referring another citation of the Hon'ble High Court of Himachal Pradesh in **S.S. Chaudhary vs. State of H.P. & Ors.** reported in **2022 SCC OnLine HP 900** drawn the attention of this Court that in the said order, judgments passed by Hon'ble Supreme Court of India and other High Courts were taken into consideration and it was the observation of the High Court of Himachal Pradesh that recovery would be impermissible at this stage although the petitioner was a Group-B employee of the State Government and furthermore observed that since the undertaking was executed long back by the petitioner so, if at this stage recovery is made in that case serious undue hardships would be caused to the petitioner.

5. The claim of the petitioner was contested by the State-respondents stating that the petitioner opted for ROP, 1999 and gave an undertaking and in pursuance of that undertaking the petitioner is bound to refund the amount. As such, the recovery memo was valid as per law. It was further submitted that 75% of gratuity and leave salary have already been paid to the petitioner and a request was made to the Accountant General to release the remaining amount of gratuity.

6. The respondents-Accountant General took the plea that discrepancy was found in pay fixation w.e.f. 01.01.2000 under ROP, 1999 and accordingly, a communication dated 25.04.2023 was sent to Department with a copy to the petitioner. Learned Counsel for respondent Nos.5 and 6 submitted that the commuted pension of

the petitioner was released on 18.08.2023 and further action will be taken after Departmental clarification. It was further submitted that the Office of respondent Nos.5 and 6 is working as the authorizing agency.

7. Learned Addl. GA for the State-respondents submitted that the petitioner would not be covered by the provisions under Payment of Gratuity Act, 1972 rather as a State Government employee his service conditions would be covered under the Tripura State Civil Services (Revised Pay) Rules. Rules 5 and 6 of the Tripura State Civil Services (Revised Pay) Rules, 2017 and subsequent pay rules framed by the government time to time governs the fixation of pay and recovery of excess payments, if made, of the State government employees. Learned Addl. GA submitted that in the judgment passed by the Hon'ble Supreme Court of India in **High Court of Punjab and Haryana & Ors. vs. Jagdev Singh**, reported in **(2016) 14 SCC 267**, Hon'ble the Apex Court held that recovery from a retired government employee is permissible if an undertaking was furnished at the time of making option for a revised pay scale. It was further submitted that whenever any government employee is moved from one scale to another revised pay scale in that case he/she is to execute one option as per the existing rules. Furthermore, the Government of Tripura has formulated revised pay rules but in the citations referred by Learned Senior Counsel for the petitioner nowhere it is found that in those citations any discussions were made about the service rules of a particular State. The petitioner in the present case

has not challenged the PPO on the basis of which his payment was reduced and since the judgments relied upon by the Learned Senior Counsel for the petitioner has not been passed on the basis of any service rules so, the same cannot be binding upon the employees of the State government. Moreso, the petitioner was a retired Group-B employee so, the principles laid down in the said judgment cannot be applied. In this connection, Learned Addl. GA relied upon another citation of the Hon'ble Supreme Court of India in **State of Punjab & Ors. vs. Ram Lubhaya Bagga & Ors.** reported in **(1998) 4 SCC 117** and submitted that in view of para Nos.20, 28 and 33 it is revealed that until and unless the policy and the rule is not challenged there is no scope to pass any order in favour of the petitioner. Further, Learned Addl. GA relied upon another citation of the Hon'ble Supreme Court of India in **Hardev Singh vs. Union of India & Anr.** reported in **(2011) 10 SCC 121** wherein in para No.26, Hon'ble the Apex Court observed as under:

"26. Similarly, in Balco Employees' Union v. Union of India [(2002) 2 SCC 333] it has been held that a court cannot strike down a policy decision taken by the Government merely because it feels that another policy would have been fairer or wiser or more scientific or logical. It is not within the domain of the court to weigh the pros and cons of the policy or to test the degree of its beneficial or equitable disposition."

Relying upon the same Learned Addl. GA submitted that since the Government of Tripura has formulated pay rules and in the pay rules it is clearly mentioned regarding execution of undertaking, that in the event of excess drawal of payment due to miscalculation, the concerned employee would be bound to refund the amount and as in the present case the petitioner was a Group-B employee and he executed option. So, in view of the judgment of

the Hon'ble Supreme Court as cited supra the petitioner cannot take the benefit of the same until and unless the revised pay rule of the State is set aside or modified by the State authority. It was further submitted that as per Central Civil Services (Pension) Rules, 1972 as adopted by the State of Tripura and as per Rule 64(3) and Rule 75(2)(b) of the said rules there is scope for recovery of the excess amount, if made. Learned Addl. GA further submitted that the citations referred by Learned Senior Counsel for the petitioner would also not be applicable in the given case because those judgments does not cover the effect of binding service rules or undertaking given under the State government regulation and the action taken by the department is within the scope of the relevant rules of the State. Learned Addl. GA further submitted that 75% of the gratuity and other retirement benefits including leave salary have already been disbursed/released in favour of the petitioner and after the Court's order dated 29.01.2024 in WP(C) No.778 of 2023, instructions were issued to the Account Officer, O/o the Principal Accountant General (A&E) on 23.02.2024 to release the remaining amount of Rs.2.5 lakhs of gratuity. The commuted value of pension was also released on 18.08.2023. Learned Addl. GA also submitted that the judgments relied upon by the Learned Senior Counsel for the petitioner did not speak anything regarding the decision rendered by the Hon'ble Supreme Court in **Jagdev Singh's** case. Finally, Learned Addl. GA for the State-respondents submitted that there is no merit in the present writ petition and as such, the same deserves to be dismissed henceforth.

8. To counter the submissions advanced by Learned Addl. GA for the State-respondents, Learned Senior Counsel for the petitioner further submitted that as cited by Learned Addl. GA in **Jagdev Singh(supra)**, the principle of law laid down in the said citation would not be applicable in the present case as the subject matter of the present case is different from that case.

9. Now, after hearing both the sides it is to be decided by this Court whether the recovery memo issued by respondent No.4 dated 10.01.2025 is legally permissible at this stage?

9.1. Admittedly, the petitioner superannuated from service on 31.01.2023. It is on record that he received the notice regarding receiving of excess payment due to wrong pay fixation after proceeding on retirement. It is also the admitted position that when the petitioner went on superannuation that time he was in the category of Group-B employee of the State. According to this Court, since the petitioner was serving under the State Government Department so he will not be guided under the provisions of the Payment of Gratuity Act as because the payment of the gratuity of the State Government employees is covered by the relevant service rules of the State.

9.2. Further, it is on record that 75% of gratuity is already been released in favour of the petitioner and the rest 25% is still pending for disbursal. The Accountant General in absence of clarification from the Department or any other communication from the Finance Department was reluctant to release the balance amount of payment of gratuity in favour of the petitioner on the

ground that he has drawn excess payment. There cannot be any divergent opinion that if any Group-B employee receives any excess payment due to wrong fixation of pay in that case in view of the undertaking executed by him he is not bound to refund the excess amount to the Department. Here, in the case at hand, the action of the Department started after the petitioner went on superannuation.

10. Now, it is to be decided as to whether at this stage it would be possible to restrain the Department from recovering any amount from the petitioner allowing the Department to withhold the payment of pending gratuity?

10.1. This question is to be answered in the light of law laid down by the Hon'ble Apex Court. As already stated, Learned Senior Counsel for the petitioner relied upon two judgments of the Hon'ble Supreme Court of India and an order of Hon'ble High Court of Himachal Pradesh at the time of hearing and submitted that every government employee of the State has to submit an option form for coming under the revised pay scale and has to give undertaking that he will refund to the Government any amount which may be 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 comes/brought to his notice.

10.2. Here, in the case at hand, the matter came to the knowledge of the Accountant General and from para No.8 of the counter affidavit filed by respondents Nos.5 and 6 it is revealed that

during the course of checking of the pension case some ambiguity was found in the pay fixation w.e.f. 01.01.2000 as per option under FR-22(I)(a)(2) vide memo No.F.6(1)-FIN(PC)/98, dated 03.07.2000 issued by the Finance Department, Government of Tripura for admissible benefit of CAS under ROP, 1999 at SL. No.2. Accordingly, the office of respondent No.5 communicated the matter with the concerned Department vide letter dated 25.04.2023 and the commuted value of pension had already been released by the office of respondent No.5 on 18.08.2023. It is further revealed that the concerned Department has not furnished any reply as per the office letter dated 01.05.2023 as well as letter dated 03.10.2024 along with reminder letter dated 09.12.2024.

11. In course of hearing of argument, Learned Senior Counsel for the petitioner relied upon three citations as stated above and Learned Addl. GA relied upon the judgment of Hon'ble Supreme Court of India in **Jagdev Singh (supra)** and two other judgments.

12. I have gone through all the citations.

Let us discuss about the relevant paragraphs of the citations referred by Learned Counsel for the parties.

13. In **Rafiq Masih (supra)** referred by Learned Senior Counsel for the petitioner Hon'ble the Apex Court at para No.18, observed as under:

"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."

Further, in **Thomas Daniel(supra)**, Hon'ble the Apex Court in para Nos.12 and 13 referred the cases of **Syed Abdul Qadir vs. State of Bihar, (2009) 3 SCC 475** and **Rafiq Masih (supra)** respectively and finally allowed the same setting aside the judgment of the Division Bench of the High Court and the connected writ Court. The relevant para Nos.12 and 13 are reproduced hereunder:

"12. In **Syed Abdul Qadir v. State of Bihar, (2009) 3 SCC 475** excess payment was sought to be recovered which was made to the appellants-teachers on account of mistake and wrong interpretation of prevailing Bihar Nationalised Secondary School (Service Conditions) Rules, 1983. The appellants therein contended that even if it were to be held that the appellants were not entitled to the benefit of additional increment on promotion, the excess amount should not be recovered from them, it having been paid without any misrepresentation or fraud on their part. The Court held that the appellants cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired. The court observed that in general parlance, recovery is prohibited by courts where there exists no misrepresentation or fraud on the part of the employee and when the excess payment has been made by applying a wrong interpretation/understanding of a Rule or Order. It was held thus:

"59. Undoubtedly, the excess amount that has been paid to the appellant teachers was not because of any misrepresentation or fraud on their part and the appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. It would not be out of place to mention here that the Finance Department had, in its counter-affidavit, admitted that it was a bona fide mistake on their part. The excess payment made was the result of wrong interpretation of the Rule that was applicable to them, for which the appellants cannot be held responsible. Rather, the whole confusion was because of inaction, negligence and carelessness of the officials concerned of the Government of Bihar. Learned counsel appearing on behalf of the appellant teachers submitted that majority of the beneficiaries have either retired or are on the verge of it. Keeping in view the peculiar facts and circumstances of the case at hand and to avoid any hardship to the appellant teachers, we are of the view that no recovery of the amount that has been paid in excess to the appellant teachers should be made."

13. In State of Punjab v. Rafiq Masih (White Washer), (2015) 4 SCC 334 wherein this court examined the validity of an order passed by the State to recover the monetary gains wrongly extended to the beneficiary employees in excess of their entitlements without any fault or misrepresentation at the behest of the recipient. This Court considered situations of hardship caused to an employee, if recovery is directed to reimburse the employer and disallowed the same, exempting the beneficiary employees from such recovery. It was held thus:

"8. As between two parties, if a determination is rendered in favour of the party, which is the weaker of the two, without any serious detriment to the other (which is truly a welfare State), the issue resolved would be in consonance with the concept of justice, which is assured to the citizens of India, even in the Preamble of the Constitution of India. The right to recover being pursued by the employer, will have to be compared, with the effect of the recovery on the employee concerned. If the effect of the recovery from the employee concerned would be, more unfair, more wrongful, more improper, and more unwarranted, than the corresponding right of the employer to recover the amount, then it would be iniquitous and arbitrary, to effect the recovery. In such a situation, the employee's right would outbalance, and therefore eclipse, the right of the employer to recover.

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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."

Again, in **Jagdev Singh(supra)** referred by Learned Addl. GA, the Hon'ble Apex Court in para Nos.8 to 13 observed as under:

"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 [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 : (2015) 2 SCC (L&S) 33] . 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 18-2-2004, 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 refixation or revision may warrant an adjustment of the excess payment, if any, made.

10. In State of Punjab v. Rafiq Masih [State of Punjab v. Rafiq Masih, (2015) 4 SCC 334 : (2015) 2 SCC (Civ) 608 :

(2015) 2 SCC (L&S) 33] 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 : (SCC pp. 334-35)

(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.

12. For these reasons, the judgment of the High Court which set aside the action for recovery is unsustainable. However, we are of the view that the recovery should be made in reasonable instalments. We direct that the recovery be made in equated monthly instalments spread over a period of two years.

13. The judgment [Jagdev Singh v. State of Haryana, CWP No. 3999 of 2005, decided on 1-8-2005 (P&H)] of the High Court is accordingly set aside. The civil appeal shall stand allowed in the above terms. There shall be no order as to costs."

14. From the revised pay rules of the State it appears that at the time of movement from one scale to another as per the prevailing rule, any employee of the State Government is/was supposed to execute option form/undertaking. In the present case

also the petitioner submitted option form/undertaking to the respective department during his movement from one scale to another. In the case relied upon by the respondents-State it appears that on the basis of undertaking given by the petitioner of that case, the Hon'ble Apex Court set aside the order of the High Court and observed that the judgment of the High Court which set aside the action for recovery was unsustainable. Ultimately, the Hon'ble Apex Court passed an order for recovery in reasonable installments.

15. Here, in the case at hand, after hearing both the sides and also after perusal of the documents relied upon by the parties it appears that the petitioner being a Group-B employee of the State Government submitted option form to the Department that in the event of drawal of excess payment, he should be bound to refund the same. But, in the judgments relied upon by the petitioner there was no fact regarding the execution of any option form by the concerned employees. So, the principle laid down in the aforesaid judgments relied upon by the petitioner cannot be applied in the present case. Furthermore, it is also not the case of the petitioner that the petitioner is an employee under the category of Group-C or Group-D of the State Government rather it is on record that he superannuated from service holding a post under Group-B category under the State-Government. So, the recovery notice issued by respondent No.4 cannot be said to be legally unsustainable at this stage.

16. As such, considering the facts and circumstances of the case no relief can be granted in favour of the present petitioner. Learned Senior Counsel for the petitioner in course of hearing of argument although asserted some other points but those points are not at all relevant for decision of the present writ petition and this Court does not think it prudent to discuss all those points at this stage for the sake of decision of this writ petition.

In view of the above, the present writ petition bears no merit. Accordingly, the same stands dismissed. However, there shall be no order as to cost.

17. It is necessary to be mentioned herein that there was no fault on the part of the petitioner concerned and there was no fraud or misrepresentation on the part of the petitioner in regard to fixation of his pay rather it was the Department who fixed the time to time pay structure of the petitioner concerned and by this time the petitioner has proceeded on superannuation. So, considering the facts and circumstances of this case it would be prudent that the respondent department may adjust the unpaid amount of gratuity with the proposed recovered amount and after adjustment the balance amount, if still remains unpaid, would be recovered by the respondent department within a period of 6(six) years in equal installments that too without any interest.

JUDGE

Snigdha

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A DATTA

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