

**HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) No.416 of 2024

Anal Biswas,

S/O. Sri Manik Lal Biswas,
Village & P.O.: Magurchara, P.S. Manubazar,
Sabroom South Tripura, PIN: 799 290,
Aged:51 years

-----Petitioner (s)

Versus

1. The State of Tripura,

to be represented by the Secretary,
Rural Development Department,
Government of Tripura, New Secretariat Building,
New Capital Complex, Kunjaban,
P.S. New Capital Complex, Agartala,
West Tripura, PIN: 799 010

2. The Joint Secretary,

Rural Development Department,
Government of Tripura, New Secretariat Building,
New Capital Complex, Kunjaban,
P.S. New Capital Complex, Agartala,
West Tripura, PIN:799 010

3. The Deputy Secretary,

Rural Development Department,
Government of Tripura, New Secretariat Building,
New Capital Complex, Kunjaban,
P.S. New Capital Complex, Agartala,
West Tripura, PIN:799 010

4. The District Magistrate & Collector,

South Tripura District, Belonia,
Government of Tripura,
Office of the District Magistrate & Collector,
South Tripura, Belonia, PIN:799 155

5. The Block Development Officer,

Satchand R.D. Block,
Office of the Block Development Officer,
Satchand R.D. Block, South Tripura, Belonia,
PIN:799 143

----- Respondents (s)

For Petitioner(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. Samarjit Bhattacharjee, Adv.
For Respondent(s)	:	Mr. K. De, Addl. G.A.
Date of Hearing & Judgment and Order	:	10.01.2025
Whether fit for Reporting	:	NO

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order (Oral)

Heard Learned Senior Counsel Mr. P. Roy Barman assisted by Mr. S. Bhattacharjee, Learned counsel appearing on behalf of the petitioner and also heard Mr. K. De, Learned Addl. G.A. appearing on behalf of the State-respondents.

02. 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 Writ in the nature of mandamus and/or Order/direction shall not be issued whereby quashing and cancelling the letter, dated, 10.04.2024, issued by the District Magistrate & Collector, South Tripura, Belonia.

(ii) Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order/direction shall not be issued whereby quashing and cancelling the impugned Memo, No.2(17)-BDO/STC/EST/2023 (Issue No-I/111020/2024), dated 17.04.2024, issued by the Block Development Officer, Satchand R.D Block, South Tripura, Belonia.

(iii) Issue Rule upon the Respondents to show cause a to why Writ in the nature of mandamus and/or Order/direction shall not be issued

whereby quashing and cancelling the impugned Letter No.F.3(26)-BDO/ACCTTS/ARREAR/2024 dated, 18.05.2024, issued by Block Development Officer, Satchand R.D. Block, Sabroom, South Tripura.

(iv) Issue Rule upon the Respondents to show cause as to why Writ in the nature of mandamus and/or Order/direction shall not be issued whereby directing the Respondents not to cause any recovery from the Petitioner in connection with his ACP-I financial benefits.

(v) Make the rules absolute.

(vi) Call for records.

03. The brief facts of this writ petition is that according to the petitioner vide Order No.F.2(9)/DIT/Estt./2000/2096-2101, dated 17.09.2002, issued by the Director, Information Technology Department, Government of Tripura, the petitioner was appointed to the post of Computer Operator in Community Information Centre, under the Directorate of Information Technology (Department of Industries and Commerce) on contract basis for a period of two years on the terms and conditions mentioned in the order and after appointment the petitioner joined under the respondents on 27.09.2002. Copy of the order was annexed with the writ petition marked as Annexure-1. Thereafter, vide memorandum dated

29.12.2008 issued by the Commissioner & Secretary, Rural Development Department, Government of Tripura the petitioner was offered appointment to the temporary post of Computer Operator (CIC) (Group-C, Non-Gazetted) on regular pay scale of Rs.4200-120-8650/- per month plus other admissible allowances under R.D. Department w.e.f 01.12.2008 on the terms and conditions mentioned in the said offer of appointment as the petitioner had completed six years of service on fixed pay basis and accordingly the petitioner joined in the post of Computer Operator under Rural Development Department, Government of Tripura vide memo dated 29.12.2008 marked as Annexure-2.

04. Thereafter vide notification dated 27.06.2009 issued by the Joint Secretary, Rural Development Department, Government of Tripura, the Governor was pleased to grant regular scale of pay of Rs.4200-8650/- to 52 Computer Operators (CIC) (Group-C, Non-Gazetted), including the petitioner after completion of six years of continuous service without break on fixed pay basis. It was also mentioned that the past services of those 52 nos. Computer Operators under CIC rendered in the IT Department would be taken into consideration for future service benefit. The notification dated 27.06.2009 is annexed with this petition marked as Annexure-3. After that, vide Order No.F.2(37-A)-DM/S/ESTT/2012/2528, dated 28.11.2013 issued by the District Magistrate & Collector, South Tripura the petitioner along with others

were allowed benefit of ACP-I w.e.f. 27.09.2012 on completion of his 10 years of regular and satisfactory service from the date of his entry into service i.e. on 27.09.2022 and the effective date from which the ACP shall be admissible was determined on 27.09.2012. The order is annexed with the petition marked as Annexure-4.

05. It was also further stated that vide memorandum No.F.2(16)-BDO/RPC/ESTT/2012-13/6188, dated 17.12.2013 issued by the Block Development Officer, Rupaichari R.D. Block fixed the scale of the petitioner in tune with the aforesaid order dated 28.11.2013 by the District Magistrate & Collector, South Tripura, Belonia whereby ACP benefit had been provided to the concerned employee were refixed to the next higher grade pay Rs.2,400/- in the same pay Band-2(ACP-1) w.e.f. 27.09.2012. The memorandum was placed with this petition marked as Annexure-5. Thereafter all on a sudden the District Magistrate & Collector, South Tripura, Belonia vide memorandum No.F.2(24)-DM/S/ESTT/2017/1100, dated 08.05.2018 withdrawn the benefit of ACP-1 which was allowed to the petitioner vide order dated 28.11.2013 without providing any opportunity to him and the said memo was annexed with the petition marked as Annexure-6.

06. Being aggrieved by the said order the present petitioner and others filed one Writ Petition being W.P.(C) No.515 of 2018 before the High Court and this High Court

by order dated 30.05.2018 stayed the operation of impugned memo dated 08.05.2018 whereby the benefit of ACP-1 was arbitrarily withdrawn by the DM & Collector, South Tripura, Belonia. Thereafter, this High Court allowed the writ petition by the common judgment and order dated 03.01.2019 along with other writ petitions quashed the memorandum dated 08.05.2018 and directed the respondents to restore and continue to give benefits of ACP-I to the petitioner. The State-respondents being aggrieved with the said judgment preferred one appeal which was numbered as WA 18/2020 and the Division Bench of this High Court quashed the writ appeal by the judgment and order dated 02.03.2021. But the Division Bench did not direct the respondents to cause recovery of the said benefit already given to the incumbents.

07. Thereafter the District Magistrate & Collector, South Tripura, Belonia vide letter dated 11.06.2021 made correspondence with the respective BDOs about the judgment of this High Court and in compliance of the said letter dated 11.06.2021 the BDO, Satchand R.D. Block vide memo dated 18.06.2021 refixed the pay and salary of the petitioner w.e.f. 01.12.2008 to 17.06.2021. But all on a sudden the D.M. & Collector, South Tripura, Belonia issued another letter on 10.04.2024 and directed the BDO, Satchand R.D. Block to deduct the overdrawn amount of pay and admissible allowance from the salary of the petitioner from the month of April, 2024 and accordingly the

BDO, Satchand RD Block by office memo dated 17.04.2024 directed the Accounts Department, Satchand R.D. Block for recovery of the excess amount paid to Sri Anal Biswas in connection with cancellation of ACP-I which was granted w.e.f. 27.09.2012. After that the petitioner submitted one representation to the B.D.O., Satchand R.D. Block on 23.04.2024. But the B.D.O. Satchand R.D. Block did not consider the prayer of the petitioner and made communication dated 18.05.2024 informed the office of the D.M. & Collector that the proposed overdrawn amount of Rs.3,89, 607/- be deducted from the salary of the petitioner in 96 intstallments @ Rs.4857/- per month and hence the petitioner filed this writ petition.

08. The State-respondents have contested the case by filing counter-affidavit and in the counter-affidavit the State-authority denied the claim of the petitioner and submitted that there are several other judgments of the Hon'ble Supreme Court regarding recovery of excess amount which is legally permissible and prayed for dismissal of this writ petition.

09. Taking part in the hearing Learned Senior Counsel Mr. P. Roy Barman assisted by Mr. S. Bhattacharjee, Learned counsel appearing for the petitioner stated that the petitioner Anal Biswas was initially appointed as Computer Operator (Group-C, Non-Gazetted) in the establishment of R.D. Department in the year 2002 on contractual basis and in the year 2008 his service was

regularized and after completion of ten years of service, CAS-1(ACP-I) was granted to him. Thereafter in the year 2013 the Department provided him the benefit of CAS-1 after taking into account of his period of contractual service and regular service both, on completion of ten years of service. Learned Senior Counsel further submitted that on 08.05.2018 the D.M. & Collector, South Tripura, Belonia issued a memorandum for withdrawal of benefit of CAS-1(ACP-I) from the petitioner (Annexure-6) and being aggrieved thereby the petitioner filed one writ petition before this High Court which was numbered as WP(C)No.515 of 2018 and a Coordinate Bench of this High Court allowed the writ petition filed by the petitioner. After that the Government of Tripura challenged the said judgment before the Division Bench of this High Court which was numbered as WA No.18 of 2020 and the Division Bench of this High Court by judgment dated 02.03.2021 reversed the judgment of the Learned Single Judge holding that the past service of contractual service cannot be counted for granting of CAS-1(ACP-I). Learned Senior Counsel Mr. Roy Barman further submitted that in the said judgment of the Hon'ble Division Bench there is no observation or decision made by the Division Bench of this High Court for recovery of amount already paid to the petitioner. But despite the same the D.M. & Collector vide letter dated 10.04.2024 [Annexure-11 to the writ petition] directed the concerned Block Development Officer to recover the said overdrawn

amount from the salary of the respective petitioners and in compliance of the said direction of the D.M & Collector, South Tripura, the BDO of Satchand R.D. Block issued two memorandums on 17.04.2024 [Annexure-12 to this writ petition] and 18.05.2024 [Annexure-14 to this writ petition] and ordered for recovery of Rs.3,89,607/- in 96 equal installments (Rs.4857/- per month) from the salary bill of April, 2024 onwards. Learned Senior Counsel further submitted that as per the decision of this High Court in connection with Case No.WP(C)1342 of 2016, WP(C)1345 of 2016 and WP(C)1346 of 2016 dated 13.07.2017 of a coordinate Bench of this High Court and also the judgment of the Hon'ble Supreme Court in **State of Punjab & Ors. vs. Rafiq Masih (White Washer) & Ors.** reported in **(2015) 4 SCC 334** that no such deduction is permissible as per law as there was no false representation or information from the side of the petitioner who is a Group-C employee and excess amount, if any, was paid that was only for the fault of the department not for the fault of the petitioner. Learned Senior Counsel also submitted that as per Annexure-11 i.e. communication of DM & Collector, South Tripura, Belonia the period of excess amount of the petitioner as Computer Operator was with effect from 27.09.2012 to 30.11.2018, so in view of the judgment of the Hon'ble Apex Court in aforementioned case **Rafiq Masih** (supra), recovery of excess amount beyond five years is not permissible.

10. The State has contested the case by filing the counter-affidavit as already stated denying the assertions of the writ petitioner rather the State has taken the plea that there are several judgments in this regard that recovery is permissible and the State finally by the counter-affidavit urged for dismissal of this writ petition. However, in course of hearing Learned Addl. G.A. Mr. K. De appearing on behalf of the State has submitted that initially a Coordinate Bench of this High Court by a judgment dated 03.10.2019 in connection with case Nos. W.P.(C) No.515 of 2018 W.P.(C) No.527 of 2018 W.P.(C) No.528 of 2018 W.P.(C) No.529 of 2018 W.P.(C) No.530 of 2018 W.P.(C) No.531 of 2018 W.P.(C) No.532 of 2018 W.P.(C) No.533 of 2018 W.P.(C) No.534 of 2018 W.P.(C) No.535 of 2018 W.P.(C) No.536 of 2018 W.P.(C) No.537 of 2018 W.P.(C) No.538 of 2018 W.P.(C) No.539 of 2018 W.P.(C) No.540 of 2018 W.P.(C) No.541 of 2018 W.P.(C) No.542 of 2018 W.P.(C) No.741 of 2018 allowed the similar claim of those petitioners. But challenging the said judgment the State of Tripura preferred an appeal before the Division Bench of this High Court and the Division Bench of this High Court by the judgment dated 02.03.2021 delivered in case Nos. W.A. 143 of 2019, W.A. 18 of 2020, W.A. 125 of 2020, W.A. 126 of 2020, W.A. 127 of 2020, W.A. 129 of 2020, W.A. 130 of 2020, W.A. 131 of 2020, W.A.134 of 2020, W.A. No.135 of 2020, W.A. No.136 of 2020, W.A. No.137 of 2020, W.A. 138 of 2020, W.A. 139 of 2020, W.A. 140 of 2020, W.A. 141 of 2020, W.A. 142 of

2020, W.A. 143 of 2020, W.A. 144 of 2020, W.A. 170 of 2020, W.A. 171 of 2019, W.A. 172 of 2019, W.A. 173 of 2019, W.A. 174 of 2019, W.A. No.175 of 2019, W.A. No.176 of 2019, W.A. No.177 of 2019 and W.A. No.178 of 2019 reversed the judgment of the Learned Single Judge of this High Court and the said fact is narrated in the counter-affidavit filed by the state-respondents.

11. I have heard rival submissions of both the parties and perused the writ petition filed by the petitioner as well as the counter-affidavit filed by the State-respondents. There is no dispute on record that the present petitioner was initially appointed as Computer Operator (Group-C) in the establishment of RD Department in the year 2002 on contractual basis and thereafter in the year 2008 his service got regularized and after completion of ten years of service he was given CAS-1 (ACP-I) by the department after taking into account of his period of contractual service and regular service. But the dispute started after issuing memorandum by DM & Collector, South Tripura on 08.05.2018 regarding withdrawal of ACP-1 benefit provided to the present petitioner along with others and after that the petitioner challenged the same before this High Court as discussed earlier.

12. The Hon'ble Supreme Court of India in **State of Punjab and Others vs. Rafiq Masih (White Washer) and Others** reported in **(2015) 4 SCC 334** in 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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, 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."

Referring the same Learned Senior Counsel submitted that in view of the principle of law laid down by the Hon'ble Apex court in the said case there is no scope to recover the excess amount already paid by the respondents to the petitioner. It was also submitted that the aforesaid clause-i and clause-ii of the said judgment would be applied in this case.

13. The petitioner also relied upon another judgment of this High Court in WP(C) No.1342 of 2016 dated 13.07.2017 in para Nos.5, 6, 7, 8 and 9, wherein this High Court observed as under:

"5. The grievance of the petitioners is thus confined to the recovery as directed by the order dated 15.11.2016. Mr. Pal, learned counsel has fairly submitted that in terms of the said memorandum dated 21.06.2013 if the pay of the petitioners is refixed, the said arrears as calculated by the Head of Office, can be shown as the excess drawn by the petitioners, but after five years when the petitioners have consumed that sum whether the recovery should be permitted. This is the sole question that has fallen for consideration of this court. Mr. Pal, learned counsel has asserted that in view of Rafiq Masih (supra) such recovery cannot be permitted as the Apex Court has clearly laid the guideline that recovery from the employees belonging to the class III and class IV

services or Group 'C' and Group 'D' services whose excess payment has been made for a period in excess of five years before the order of recovery was issued cannot be made.

6. In the present case, the petitioners have enjoyed the said excess amount for five years when the order of recovery was issued and hence following the guidelines as laid down by the Apex Court in Rafiq Masih (supra), the respondents be prohibited from recovering any amount from the petitioners. For purpose of reference, the relevant paragraph where the guidelines are laid down has been extracted hereunder:

"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 herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

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

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(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."

7. Mr. Chakraborty, learned Additional Government Advocate has fairly admitted that on the day of issuing the impugned order dated 15.11.2016 (Annexure P-7 to the writ petition) the time frame of five years had expired, but the notice was issued to the petitioner much before that, i.e. on 22.09.2016. That apart, Mr. Chakraborty, learned Additional Government Advocate has submitted that an undertaking was taken from the petitioner at the time of making payment on refixation of pay in the promotional post that had they received any amount in excess they would refund the said amount. Mr. Chakraborty, learned Additional Government Advocate did not dispute the fact that after issuance of the memorandum dated 21.06.2013 the clarification generated a new circumstances when the fact of the drawal of the excess amount was located as the petitioners' pay in the promotional post was again refixed. Mr. Chakraborty, learned Additional Government Advocate has submitted having referred para 11 of the reply that the Head of Office for reason best known to him had taken the action after 3 years and 4 months from the date of issuance of the said memorandum dated 21.06.2013.

8. Having appreciated the submissions made by the learned counsel appearing for the parties, this court is of the view that if the recovery is permitted, it would be

inequitable and harsh and it would outweigh the equitable balance.

9. In view of this, the impugned order of recovery dated 15.11.2016 (Annexure 7 to the writ petition) is set aside and quashed. The respondents are directed not to recover any amount from the petitioner which has been determined to have drawn by the petitioner in excess of the pay till their refixation in terms of the memorandum dated 21.06.2013 (Annexure R-1 to the writ petition)."

Referring the same Learned Senior Counsel appearing for the petitioner submitted that in view of the aforesaid citation there is no scope on the part of the State-respondents to recover the amount from the petitioner which is already been paid.

14. Learned Senior Counsel finally relied upon another citation of the Hon'ble Supreme Court in **Jagdish Prasad Singh vs. State of Bihar and Others** reported in **2024 SCC OnLine SC 1909** wherein para Nos. 23, 24, 27 and 28 Hon'ble the Apex Court observed as under:

"23. In the case of **State of Punjab and Others v. Rafiq Masih (White Washer) and Others**³, this Court held 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 inequitable or harsh or arbitrary to such an extent, as would far outweigh

the equitable balance of the employer's right to recover."

(emphasis supplied)

24. Recently, this Court in Thomas Daniel v. State of Kerala and Others: 2022 SCC OnLine SC 536, held that the State cannot recover excess amount paid to the ex-employee after the delay of 10 years.

27. The order dated 8th October, 2009 passed by the State Government directing reduction in the pay scale of the appellant from Rs.6500-10500 to Rs.5500-9000 w.e.f. 1st January, 1996 and directing recovery of the excess amount from him is grossly illegal and arbitrary and is hereby quashed and set aside. The impugned order dated 27th August, 2012 passed by the Division Bench of the High Court does not stand to scrutiny and is hereby quashed. Therefore, the appellant shall continue to receive the pension in accordance with the pay scale of Rs.6500-10500.

28. In case, if any reduction in pension and consequential recovery was effected on account of the impugned orders, the appellant shall be entitled to the restoration/reimbursement thereof with interest as applicable."

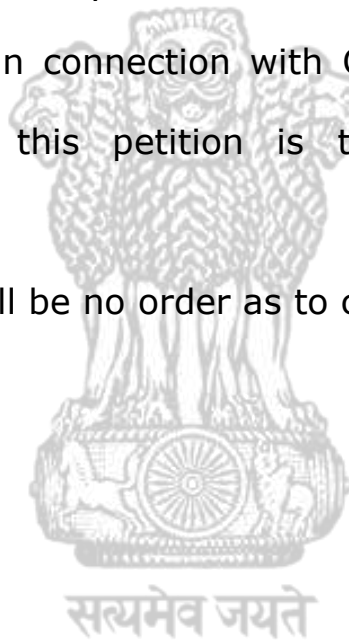
Referring the same Learned Senior Counsel further drawn the attention of this court that since similar other matters of other petitioners are also pending and by this time some amount is already been deducted from the salary bill of the petitioners so a direction may accordingly be given to the State-respondents to refund/restore the said amount to the petitioners if deducted from the salary bill.

15. So, after hearing detailed submission of Learned Counsels of both the parties and also after going through the principles of law laid down by the Hon'ble Apex Court in the aforementioned cases and also after perusal of the judgment of a coordinate Bench of this High Court, this court is of the view that if at this stage the recovery is permitted it would be unjustified and harsh for the petitioner and also would come under hardships of the petitioner, so in view of the above, the impugned order of recovery dated 17.04.2024 and 18.05.2024 issued by B.D.O., Satchand RD Block i.e.

Annexure-12 and 14 of the writ petition are accordingly stands set aside and quashed. The respondents are directed not to recover any amount from the petitioner which has been determined to have been withdrawn by the petitioner, in excess of the pay.

16. In the result, the writ petition is allowed to the extent as indicated above. However, if any amount by this time is deducted from the salary bill of the petitioner that shall be refunded/restored to the petitioner by the respondents immediately. The interim order dated 02.07.2024 passed in connection with Case No.IA No.1 of 2024 arising from this petition is thus hereby made absolute.

There shall be no order as to costs.



JUDGE

**MOUMITA
DATTA**

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