

**HIGH COURT OF TRIPURA  
AGARTALA  
WP(C)No.780 of 2024**

**Saral Bahadur Molsom,**  
son of Late Rana Manik Molsom  
of Village-Shankhala & P.O. & P.S. Taidu,  
Amarpur, Gomati District, Tripura, 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-799010

**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-799010

**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-799010

**4. The District Magistrate & Collector,**  
Gomati District Tripura, Government of Tripura,  
O/o the District Magistrate & Collector,  
Gomati Tripura, Udaipur, PIN-799120

**5. The Block Development Officer,**  
Ompi R.D. Block, O/o the Block Development Officer,  
Ompi R.D. Block, Gomati Tripura, PIN-799101

----Respondent(s)

|                                        |   |                                  |
|----------------------------------------|---|----------------------------------|
| For Petitioner (s)                     | : | Mr. Samarjit Bhattacharjee, Adv. |
| For Respondent(s)                      | : | Mr. Karnajit De, Addl. G.A.      |
| Date of Hearing of<br>Judgment & Order | : | 17.02.2025                       |

Whether fit for reporting : YES

**HON'BLE MR. JUSTICE BISWAJIT PALIT**

**Judgment & Order(Oral)**

Heard Mr. Samarjit Bhattacharjee, Learned  
counsel appearing on behalf of the petitioner and Mr. Karnajit

De, Learned Addl. G.A. appearing on behalf of the State-respondents.

**[02]** By means of this filing this writ petition, the petitioner has sought for the following reliefs :

- i. Pass an ad interim Order the operation of the Memorandum, dated 19.05.2023, issued by the Block Development Officer, Ompi R.D. Block, till disposal of the instant Writ Petition.
- 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 Memorandum, dated, 19.05.2023, issued by the Block Development Officer, Ompi R.D. Block.
- iii. 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.
- 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 to reimburse the Petitioner with the money already deducted from his salary in the guise of recovery consequent to the issuance of the Memorandum, dated 19.05.2023.
- v. Make the rules absolute.
- vi. Call for records.
- vii. Pass any further order/orders as this Hon'ble High Court considered fit and proper."

**[03]** The brief facts mentioned in the writ petition are in short is that vide Memo No.F./122-A/DM/S/ESTT/151 dated 19.02.2004 issued by the District Magistrate & Collector, Gomati District the petitioner was appointed to the post of Computer Operator in Community Information Centre (CIC), under the Directorate of Information Technology (Department of Industries and Commerce) on contract basis for two years on the terms and conditions mentioned therein and accordingly, the petitioner joined under the Respondents on 21.02.2004.

**[04]** After that vide notification dated 27.06.2009, issued by the Joint Secretary, Rural Development Department, Government of Tripura, the Governor had been pleased to grant regular scale of pay of Rs.4200-8650/- to 52 Computer Operators (CIC) (Group-C, Non-Gazetted), including the Petitioner after continuous service without break on fixed pay basis. It was also mentioned that the past services of those 52 numbers of Computer Operators under CIC rendered in the IT Department would be counted towards future service benefit, and the benefit of regular scale had been extended to those 52 incumbents w.e.f. 01.12.2008.

**[05]** The petitioner further asserted that thereafter vide order dated 08.08.2012 issued by the District Magistrate & Collector, Gomati District, the petitioner along with three others were re-designated as Senior Computer Assistant with fixed emoluments of Rs.7,060/- only per month (being 75% of the entry level pay in the pay Band-2 of Rs.5,310 – 24,000/- and grade pay of Rs.2,100/-) w.e.f. the date mentioned in the said order. In the list mentioned in the aforesaid order, name of the petitioner appeared at Sl. No.01 and his date of joining in service

has been reflected on 21.02.2004. It was also further mentioned in the said order that the date of effect of re-designation of the petitioner as Senior Computer Assistant would be w.e.f. 01.01.2006 and financial benefit would be given effect from 01.01.2009.

**[06]** Further, the petitioner was allowed the benefit of ACP-I on completion of his 10 years of regular and satisfactory service from the date of his entry into Government service i.e. on 21.02.2004 and the effective date from which such ACP shall be admissible was determined as 21.02.2014 and accordingly, the petitioner was allowed one increment on the pay of existing pay Band and Grade Pay plus next available Grade Pay as benefit of financial up-gradation under the ACP Scheme.

**[07]** Thereafter, vide Memorandum dated 31.12.2016, issued by the Block Development Officer, Ompi RD Block, Gomati Tripura the petitioner was granted the benefit of financial up-gradation under ACP as per TSCS (Revised Pay) Rules, 2009 (12<sup>th</sup> Amendment Rules, 2015). It has been mentioned in the said Memorandum that as per Tripura State Civil Service (Revised Pay) Rules, 2009 (12<sup>th</sup> Amendment Rules, 2015) vide notification No.F.6(1)-FIN(PC)/2012 dated 31.03.2015, the pay of Sri Saral Bahadur Molsom, Senior Computer Operator, i.e., the petitioner herein had been re-fixed under ACP-I in the scale of pay of Rs.5700-24000/- with Grade Pay of Rs.4200/- under PB-2. It was further mentioned herein that consequently pay of the petitioner was fixed at Rs.13,360/- (Rs.11960-2800+4200) on 21.02.2014 with DNI on 01.07.2014 (by allowing only higher grade pay of Rs.4200/-). From the said memorandum, it is also reflected that as per option exercised by the petitioner, his pay

had been once again re-fixed at Rs.14,090/- on 01.07.2014 by allowing two increments at a time one annual increment and second under ACP-I provided under Note-1 and 2 of Rule 12 of TSCS (Revised Pay) Rules, 2009 and his DNI was fixed on 01.07.2015.

**[08]** Thereafter, the Deputy Secretary, Rural Development Department, Government of Tripura vide communication dated 20.09.2014 to various District Magistrate and Collectors, Government of Tripura inter alia notified that the Finance Department, Government of Tripura had opined that the contractual period of service rendered by a Government servant would not be taken into account for computing the required period of service for the grant of ACP benefit. Accordingly, the Finance Department, Government of Tripura directed that those Computer Operators (CIC), who had been allowed the benefit of ACP, taking the contractual period of service into consideration, should be immediately cancelled and the excess amount paid to them, should be recovered from them at the earliest.

**[09]** Thereafter, the Additional Secretary, Rural Development, Government of Tripura made a communication dated 05.05.2018 to all the District Magistrate and Collectors, Government of Tripura requesting them to send the status regarding the grant of ACP-I benefit to the Senior Computer Assistant, Rural Development Department, Government of Tripura posted under their respective controls and further directing them that in the event that any Senior Computer Assistant, RD Department, Government of Tripura had already been granted the benefit of ACP-I, such benefit should be immediately withdrawn. In pursuance of that, the District

Magistrate and Collector, Gomati, Tripura issued Memorandum dated 11.05.2018 thereby withdrawing the benefit of ACP-I earlier granted in favour of the petitioner and similarly situated other Senior Computer Assistant, RD Department, Government of Tripura.

**[10]** Being aggrieved by the aforesaid Memorandum dated 11.05.2018, the petitioner along with similarly situated others, approached the Hon'ble High Court of Tripura challenging the said memorandum which was numbered as WP(C)No.537 of 2018 and the Hon'ble High Court vide order dated 30.05.2018 stayed the operation of the impugned memo dated 11.05.2018, whereby the benefit of ACP-I had already been withdrawn by the DM and Collector, Gomati District.

**[11]** This High Court after hearing vide judgment dated 03.10.2019 allowed the writ petition bearing No. WP(C) 537 of 2018 along with other connected writ petitions. Challenging that judgment, the State-respondents filed writ appeal before the Hon'ble Division Bench, High Court of Tripura which was numbered as W.A. 139 of 2020. But the Hon'ble Division Bench, High Court of Tripura vide common judgment and order dated 02.03.2021 allowed the said writ appeal and other connected writ appeals. However, the Hon'ble Division Bench, according to the petitioner, did not direct the state-respondents to cause recovery of the benefits already given to the incumbents. But the Senior Deputy Magistrate, O/o the District Magistrate and Collector, Gomati District, Udaipur issued letter dated 19.11.2021 to the Block Development Officer, Ompi RD Block and others whereby requesting him to confirm about recovery of the excess amount paid to the Senior Computer Assistant and

submit a due drawn statement by 25<sup>th</sup> November, 2021 and consequently, the BDO, Ompi RD Block issued one Memorandum on 13.01.2022. But all on a sudden, the BDO, Ompi RD Block issued another Memorandum dated 19.05.2023 whereby it was notified that as Audit observation raised by the Audit Officer of Directorate of Audit, Finance Department, Government of Tripura vide No.F.8(1)/AUD-DIR/IA/RDD/10080/GA/2022-23/364-65 dated 20.04.2023 regarding overdrawn salary to the tune of Rs.6,44,748/- in connection with allowing of unnatural ACP benefit in the form of personal pay from 21.04.2014 to 01.07.2021 in favour of Sri Saral Bahadur Molsom, Senior Computer Assistant (SCA) under Ompi RD Block and it was also mentioned that the whole amount would be recovered as installments from pay bills of the petitioner from May, 2023 payable in the month of June, 2023 in 128 installments @ Rs.5,000/- per month and one installment for Rs.4,478/- from May, 2023 to January, 2034. It was further mentioned by the petitioner that the monthly deductions from the petitioners salary has already started since June, 2023 and as a result of such deduction, the petitioner suffered severe pecuniary loss. Hence, the petitioner has filed the present writ petition with the grounds as stated above.

**[12]** In course of hearing of argument, Mr. Samarjit Bhattacharjee, Learned counsel appearing on behalf of the petitioner fairly submitted that in similarly situated cases this High Court granted benefits to the different petitioners cancelling the recovery order and Learned counsel in course of hearing relied upon another order passed by this Court in WP(C)No.416

of 2024 dated 10.01.2025 and submitted that the same order may also be passed in this case.

**[13]** The state-respondents in this case did not file any counter-affidavit, however, in course of hearing of argument, Mr. Karjanit De, Learned Addl. G.A. fairly submitted that this case is squarely covered by a judgment of this Court in WP(C)No.416 of 2024 and WP(C)No.430 of 2024 and urged before the Court to pass appropriate order.

**[14]** I have heard submission of both the parties and perused the writ petition filed by the writ petitioner. There is no dispute on record that the petitioner was appointed as Computer Operator, Group-C in the establishment of Department of R.D. Department in the year 2004 and after completion of ten years service he was given the given benefit of ACP-I w.e.f.21.02.2004 by the Department after taking into account of his period of contractual service and regular service. But the dispute started after issuing Memorandum of D.M. & Collector, Gomati District, Udaipur dated 11.05.2018 withdrawing of ACP-I benefit provided to the present petitioner along with others and accordingly, the other petitioners challenged the same before the High Court as discussed earlier.

**[15]** In this regard, Hon'ble the 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 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.

**[16]** 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). (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.”

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 re-fixation 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 inequitous and harsh and it would out-weigh 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 re-fixation in terms of the memorandum dated 21.06.2013 (Annexure R-1 to the writ petition).”

Referring the same Learned 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.

**[17]** Learned 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<sup>3</sup>, 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 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)**

**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 exemployee 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 counsel further drawn the attention of this court that by this time some amount is already been deducted from the salary bill of the petitioner so a direction may accordingly be given to the State-respondents to refund/restore the said amount to the petitioner if deducted from the salary bill.

**[18]** So, after hearing submission of both the sides it appears to this Court that this case is also squarely covered by the judgment of this High Court in WP(C)No.416 of 2024 and WP(C)No.430 of 2024. Accordingly, in view of the principles laid down by the Hon'ble Apex Court in the aforementioned cases and also on perusal of the judgment passed by this Court and a coordinate Bench of this High Court this Court is of the view that if at this stage, the recovery is permitted, in that case it would be unjustified and harsh to the petitioner and it would also cause serious hardships to the petitioner.

So, in view of the above, the impugned order of recovery dated 19.05.2023 issued by BDO, Ompi, R.D. Block, Gomati District i.e. Annexure-9 to the writ petition is 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.

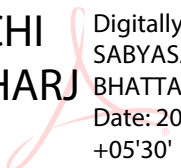
**[19]** In the result, the writ petition is allowed to the extent as indicated above. However, if any amount by this time is deducted from the salary bill of the petitioner that shall be

refunded/restored to the petitioner by the respondent authority within a period of 4(four) months from the date of passing of this order. The interim order dated 16.12.2024 passed by this Court in connection with I.A. No.01 of 2024 arising out of WP(C)No.780 of 2024 is thus hereby made absolute.

There shall be no order as to costs.

**JUDGE**

SABYASACHI  
BHATTACHARJ  
EE



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